

# AGENCY MISTAKES IN FEDERAL RETIREMENT— WHO PAYS THE PRICE?

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HEARING  
BEFORE THE  
SUBCOMMITTEE ON THE CIVIL SERVICE  
OF THE  
COMMITTEE ON  
GOVERNMENT REFORM  
AND OVERSIGHT  
HOUSE OF REPRESENTATIVES  
ONE HUNDRED FIFTH CONGRESS  
FIRST SESSION

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JULY 31, 1997  
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## AGENCY MISTAKES IN FEDERAL RETIREMENT—WHO PAYS THE PRICE?

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THURSDAY, JULY 31, 1997

HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE ON THE CIVIL SERVICE,  
COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT,  
*Washington, DC.*

The subcommittee met, pursuant to notice, at 9:05 a.m., in room 2154, Rayburn House Office Building, Hon. John L. Mica (chairman of the subcommittee) presiding.

Present: Representatives Mica, Pappas, Morella, Cummings, and Ford.

Staff present: George Nesterchuk, staff director; Ned Lynch, professional staff member; Caroline Fiel, clerk; and Cedric Hendricks, minority counsel.

Mr. MICA. I'd like to call this meeting of the House Civil Service Subcommittee to order. This morning we're going to have a hearing related to mistaken enrollments in our Federal retirement programs. And the title of today's hearing is, "Who Pays the Price?"

I'd like to start with an opening statement, then I'll recognize other Members for their comments and we'll begin the hearing.

We, in fact, have heard many complaints about Government agencies making errors in Social Security payments, veterans' benefits, tax audits, and other transactions with ordinary citizens.

Today, however, we'll hear about a strange twist in this tale. And that is Federal employees who themselves are victimized by mistakes of their own agencies. Beginning some 10 years ago, hundreds, perhaps thousands of Federal employees—and we're trying to get a handle on that figure—but hundreds, in fact, maybe thousands of employees here are enrolled in the wrong retirement system.

What sounds like simple administrative error has turned into a bureaucratic nightmare for many of these individuals. The consequences of these errors, in fact, can be quite severe: reduced retirement benefits, back taxes owed, underfunded Thrift Savings accounts, lost investment opportunities, and tons and tons of aggravation.

Our purpose today is to hear testimony that will illustrate and personalize the impact of these agency mistakes. We'll also hear from some of the agencies that are involved. I hope that their experiences will contribute to a swift and satisfactory resolution of our employees' problems.

This issue has festered for several years now, and the list of victims keeps growing. By now there's plenty of blame to go around

for everyone. We can start with the employees in the agencies who made the mistakes in the first place. Then, of course, there's the Office of Personnel Management, the agency responsible for administering our Federal retirement programs. Why haven't they in fact intervened or found a solution to this problem? Does OPM think that expensive legal suits are the proper course, or in some cases, the only course for individuals to resolve this? The Federal Retirement Thrift Savings Board deserves credit for attempting to resolve this problem in 1990. But they could have saved many people unnecessary grief if they had pursued enrollment problems more aggressively.

Of course we can't forget the Post Office and Civil Service Committee in the 101st Congress. Congress should receive a special prize for ducking this issue from the beginning. In fact, Congress' position on this enrollment problem was not just nonresponsive, it was, in fact, irresponsible.

Here's what they said in an April 19, 1990, report: "The committee believes that the right to file suit provided in current law is an appropriate means for participants and beneficiaries to seek relief if the administrative process proves unsatisfactory."

In effect, Congress threw these employees to the wolves—and it sounds like the attorneys—and told them to sue if they didn't like it. But then OPM was not much better. This has been called an administration that "feels your pain" and trumpets its alleged "customer-oriented" reinvention of government. OPM's customers are the Federal employees whose retirements they hold in trust. And, unfortunately, these are the people that are also feeling the pain right now.

Stripped of the formalities, this is what OPM has to say about the innocent victims of this administrative nightmare. And I quote again from one of their correspondences on this issue.

Dear Federal employee: Your agency has made a mistake. Because of that mistake your enrollment in CSRS retirement is terminated. You are being placed in FERS. You now have a Social Security problem. So contact the Social Security administration to correct your records.

You also have a tax problem. So you should contact the Internal Revenue Service and work it out. While you're at it, get in touch with the Thrift Investment Board, then check your agency personnel records and also straighten out your Federal retirement records.

We have a copy of one of these letters that was sent out December 24, 1996—the end of last year—just in time for the holidays. I sure hope that whoever came up with the letter didn't get the Vice President's Golden Hammer Award for warmth and sensitivity.

The retirement and insurance service at OPM has been chosen to be one of the administration's flagship performance-based organizations. If this is what they consider model performance, then the expression, "I'm from the government. I'm here to help you," will remain a warning, not a promise.

Can you imagine a private sector company sending a similar letter? We made one up here just for illustration purposes.

Dear consumer: About the car you bought from us last year. It's a lemon. The transmission is bad and will cost you a bundle to fix. You have probably noticed that the engine is no good. We hope you can afford to maintain it. We made a mistake in pricing the car, so we kept the sales tax to make up the difference.

Your state revenue office will be in touch to collect the taxes you now owe. By the way, we put the wrong plates on your car and messed up your registration. You may want to sort that out with the Motor Vehicle Bureau. It's been a pleasure, and we hope to see you again real soon.

We just made that up for illustration. But it does sum up the type of problem that we face here. Fortunately, in a competitive marketplace, businesses like that would not survive. Businesses that send out that kind of notice would be laughed at. The marketplace would take care of that problem before government regulations could be enacted.

Unfortunately, for our Federal employees, it will take legislation to fix this enrollment problem. And we're here today to try to come up with a better answer than the bureaucratic inertia these employees have had to face so far. I've made some light of the aspects of this issue, but the problems are very real.

Our first panel today will put a human face on this problem. And our second panel of agency witnesses hopefully will provide some useful suggestions and solutions from the administration on how we may work together to fix this problem.

Even if we are unable to resolve this with the recommendations from the panel, I hope that we in Congress can come up with a solution that will help the agencies out of this dilemma we find ourselves in today. Those are my opening comments. I'm very pleased to yield now to the distinguished gentleman and ranking member from Maryland, Mr. Cummings.

[The prepared statement of Hon. John L. Mica follows:]

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#### Opening Remarks of the Honorable John L. Mica Chairman, Civil Service Subcommittee Hearing: Mistaken Enrollments in Federal Retirement Programs: Who Pays the Price? July 31, 1997

We have heard many complaints about government agencies making errors on Social Security payments, veterans' benefits, tax audits, and other transactions with ordinary citizens. Today we will hear about a strange twist on this tale: federal employees who themselves are victimized by the mistakes of their own agencies. Beginning ten years ago, hundreds, perhaps thousands, of federal employees were enrolled in the wrong retirement system. What sounds like a simple administrative error has turned into a bureaucratic nightmare for many of these people. The consequences of these errors can be severe -- reduced retirement benefits, back taxes, underfunded thrift savings accounts, lost investment opportunities, and lots and lots of aggravation.

Our purpose today is to hear testimony that will illustrate and personalize the impact of these agency mistakes. We will also hear from some of the agencies that are involved. I hope that their experiences will contribute to a swift and satisfactory resolution of employees' problems.

This issue has festered for several years now, and the list of victims keeps growing. By now there is plenty of blame to go around. We can start with the employees in the agencies who made the mistakes in the first place. Then there is OPM, the agency responsible for administering the retirement system. Why have they not intervened and proposed a solution? Does OPM think that expensive legal suits are the proper course? The Federal Retirement Thrift Investment Board deserves credit for attempting to resolve this in 1990, but they could have saved many people unnecessary grief if they had pursued these enrollment problems more aggressively.

And, of course, we can't forget the Post Office and Civil Service Committee in the 101st Congress. Congress should receive a special prize for ducking this issue in the beginning. In fact, Congress' position on this enrollment problem was not just non-responsive, it was irresponsible. Here is what they said in an April 19, 1990 report:

"The Committee believes . . . that the right to file suit provided in current law is an appropriate means for participants and beneficiaries to seek relief if the administrative process proves unsatisfactory."

In effect Congress threw these employees to the wolves and told them to sue if they did not like it.

But then OPM was not much better. This is an administration that "feels your pain," and trumpets its alleged "customer oriented" reinvention of government. OPM's customers are the federal employees whose retirement accounts they hold in trust. Stripped of the formalities, this is what OPM has to say to the innocent victims of this administrative nightmare:

"Dear Federal Employee: Your agency has made a mistake. Because of that mistake, your enrollment in CSRS retirement is terminated. You are being placed in FERS. You now have a Social Security problem, so contact the Social Security Administration to correct your records. You also have a tax problem, so you should contact the Internal Revenue Service and work it out. While you are at it, get in touch with the Thrift Investment Board, then check your agency personnel records and also straighten out your federal retirement records."

We have a copy of one of these letters that was sent out December 24, 1996 -- just in time for the holidays. I sure hope that whoever came up with that letter didn't get the Vice-President's Golden Hammer Award for warmth and sensitivity.

The Retirement and Insurance Service at OPM has been chosen to be one of the Administration's flagship Performance Based Organizations. If this is what they consider model performance, then the expression "I'm from the government; I'm here to help you," will remain a warning, not a promise.

Can you imagine a private sector company sending a similar letter:

"Dear Consumer: About the car you bought from us last year ... it's a lemon. The transmission is bad and it will cost you a bundle to fix it. You have probably noticed that the engine's no good. We hope you can afford to maintain it. We made a mistake in pricing the car, so we kept the sales tax to make up the difference. Your State revenue office will be in touch to collect the taxes you now owe. By the way, we put the wrong plates on the car and messed up your registration. You may want to sort that out with the motor vehicle bureau. It has been a pleasure, and we hope to see you again real soon."

Fortunately, in a competitive market businesses like that will not survive. The marketplace will take care of that problem before government regulations could be enacted.

Unfortunately for our federal employees, it will take legislation to fix this enrollment problem. We are here today to try to come up with a better answer than the bureaucratic inertia these employees have had to face so far. I have made light of some aspects of this issue, but the problem is very real. Our first panel will put a human face on it. The second panel of agency witnesses will hopefully provide some useful suggestions from the Administration on how to fix the problem. Even if they do not, this Congress will find a solution.

###

Mr. CUMMINGS. Mr. Chairman, I want to thank you very much for holding this hearing today. It is a very important hearing. I will not spend my time trying to place blame here or there. I am interested to hear what the second panel has to say. But I know one thing. If we can send that little wagon up there to Mars and we can get pictures back, then we sure ought to be able to resolve this issue.

One of the things that has consistently concerned me is that a lot of times we in Government forget that we as human beings have one life to live; this is no dress rehearsal, and this is the life.

And so when we miss out, when people are deprived of things that they were due through no fault of their own, government has a responsibility to correct it if we made the mistake. And that's what it's all about.

I want to be in a situation that after this hearing, by the end of this hearing, that we set some kind of a deadline to have this matter resolved. I mean to have it resolved so that people do not—I read the testimony and it screams at me. When I read the testimony last night that was going to be presented here today, I said, "Something has to be corrected."

Now let me tell you something. We can have motion, commotion, and emotion, and no results. That does not do families any good whatsoever. It does not do these witnesses any good. And the people that they represent. And when I say the people they represent, I mean the people that are in like circumstances.

And so today we need to begin—we have done all kinds of things in this Congress very rapidly. When we want to do something we do it. And I think that between both sides of this—and I know of our chairman's concern. But that concern, all of our concern has to be turned into results with a timetable.

And so the agencies at some point have to come together. Mr. Chairman, I'm going to recommend at some point that we set a deadline for having this matter resolved. I mean, we can go on and on and on, and guess what. I'm so glad that you talked about the history of this, because folk could be in the same position next year, 5 years from now, 10 years from now, unless we set some type of deadlines.

And so I'm glad you brought us together today with regard to this issue. It is a very important issue. And now government must stand up for people who have stood up for us. I get tired of the rap that Federal employees take when they are working, giving this United States of America every single thing—their blood, sweat, and tears—but yet and still when we make mistakes, they've got to wait to have them resolved.

And so I had a written statement, but I am so upset about this I am speaking from my heart. And so I hope that we're able to resolve this, Mr. Chairman. And I agree with you. We cannot wait one moment. One more moment not resolving this matter is a moment that some child in the family of one of these witnesses will not get what they are due.

When opportunities are missed—and I repeat, we have one life to live. This is no dress rehearsal. And this is the life. I want to thank the witnesses for being here today. I look forward to your

testimony. And hopefully we'll be able to bring some swift and appropriate resolution to this matter.

Mr. MICA. I thank the gentleman for his opening comments and yield now to the vice chairman of our panel, Mr. Pappas. You're recognized.

Mr. PAPPAS. Thank you, Mr. Chairman. And thank you for calling this hearing. And I, too, had the opportunity to review the written testimony of some of the folks that we're going to hear from. And I was equally horrified.

And, you know, one thing that struck me, we each in our lives have to deal with deadlines. We have reports or tasks that have to be done by a certain date. People that are in business have to meet deadlines in dealing with their customers. And what I saw here, again, in reading these stories and the descriptive memo kind of outlining this entire situation, appeared to be a lack of accountability from some who may have been dealing with these programs and dealing with the Federal employees, many of which have experienced disruption to their lives and to their financial well-being.

So I, too, want to join my voice to those who are demanding accountability for what has taken place and not to just set yet another deadline that won't be met. Thank you, Mr. Chairman.

Mr. MICA. Thank you. And I now recognize the gentlelady from Maryland, Mrs. Morella.

Mrs. MORELLA. Thank you, Mr. Chairman. I do want to thank you for holding this morning's hearing to discuss retirement enrollment errors between January 1984 to January 1987.

In May, I wrote the chairman a letter requesting that he hold a hearing on this matter. And I really want to thank him and his staff for beginning the process of figuring out how to remedy this complicated issue. I also wrote to OPM, and I haven't yet received a response.

Many, possibly thousands of Federal employees who were hired between January 1984 and 1987 were erroneously placed in CSRS. And to this day, many of them do not know that they are in the wrong system and the serious financial consequences that await them.

Those who have discovered the error have been deprived of critically important retirement benefits and tax benefits. And they have been subjected to tremendous strain and incurred tremendous legal expenses. Mr. Chairman, this situation is incredibly unfair. I strongly believe that these Federal employees are entitled to compensation for these losses, losses that were the direct result of their agency's actions.

Testifying before us today is one of my constituents, Barry Schrum. He has been deeply affected by his agency's errors. Mr. Schrum was hired by the Office of the Inspector General of the Department of Energy in December 1994, and was placed in the Civil Service Retirement System, despite the fact that new enrollments were prohibited after December 31, 1983.

In August 1987, he was told he had the option of electing to participate in the new retirement system, the Federal Employee Retirement System. But he chose to remain in the CSRS. From that time until April 1996 the OIG withheld CSRS contributions of 7 percent of his salary.

In April 1996, OIG personnel determined that he had been improperly placed in CSRS and that his retirement classification would retroactively be changed to FERS. Mr. Schrum will tell the whole story. But I must emphasize the fact that Mr. Schrum and thousands of other Federal employees who were incorrectly classified were denied several opportunities to save for their retirement, and we owe it to them to remedy this situation.

It is absolutely critical that we hold OPM and agencies responsible. Last year the Senate Appropriations Committee directed OPM to provide a legislative recommendation by January. As no action by OPM has been taken, it is past time for the Congress to step in.

I look forward to today's discussion of ways to remedy this egregious situation.

Thank you, Mr. Chairman.

Mr. MICA. I thank the gentlelady and also for her leadership on this issue and helping to bring it before our panel. I would like to introduce and welcome our first panel this morning. Our panel is just a sampling of dozens of individuals we've heard from and cases resulting from these errors in enrollment.

Our first panel today consists of Alan White, Office of Inspector General, the Department of Defense, Mission Viejo, CA. I think he's also going to bring us some remarks from a witness who couldn't be with us, Deborah Monroe.

We have David Mangam, from the Army War College of Carlisle, PA; John Gabrielli, Internal Revenue Service, Buffalo, NY; and E. Barry Schrum, Department of Energy, Derwood, MD.

I just want to advise the members of our panel that this is an investigations and oversight subcommittee of Congress. It is customary that we swear all of our witnesses in, so if you would stand. [Witnesses sworn.]

Mr. MICA. The record will reflect the witnesses answered in the affirmative. Since you have not testified before this panel before, I might indicate that we like to have our panelists keep their oral comments to the subcommittee limited to 5 minutes, if you would, and try to summarize.

And we would be glad to take other testimony or information for the record. We'll be glad to do that.

I'd like to welcome each of you; thank you for participating. First, for 5 minutes, Mr. Alan White, Office of the Inspector General, Department of Defense, Mission Viejo, CA; good morning and welcome, Mr. White, you're recognized.

**STATEMENTS OF ALAN WHITE, OFFICE OF THE INSPECTOR GENERAL, DEPARTMENT OF DEFENSE; DAVID MANGAM, ARMY WAR COLLEGE; JOHN GABRIELLI, INTERNAL REVENUE SERVICE; AND E. BARRY SCHRUM, DEPARTMENT OF ENERGY**

Mr. WHITE. Thank you, Mr. Chairman and members of the subcommittee. It is my pleasure to be here today and have this opportunity to discuss the matter of erroneous enrollments in the Federal retirement systems.

It is my belief that it is a significant problem throughout the Federal Government and affects literally thousands of Federal em-

ployees. At the request of the subcommittee I will provide testimony about my experience as an employee of the Department of Defense Inspector General.

By way of introduction, I am currently a GS-15 working as the assistant special agent in charge of the Defense Criminal Investigative Service western field office in Mission Viejo. We're the criminal investigative arm of the Department of Defense Inspector General.

As you requested, I will specifically address those issues mentioned in your letter. On August 26, 1984, I was hired by the Department of the Air Force as a civilian criminal investigator and placed into the Civil Service Retirement System for Federal law enforcement.

On August 31, 1986, I accepted a position with the Department of Defense Inspector General, DCIS and remained in the CSRS. With the passage of FERS I should have been transferred to FERS effective January 1, 1997. The DODIG personnel office did not transfer me into FERS but continued to classify me as an employee covered by CSRS offset program. In April 1991 the DODIG personnel office documented a review of my personnel file to verify my service computation date and that I was in the proper retirement system. This review failed to detect the erroneous retirement enrollment. CSRS contributions of 7.5 percent of my salary continued to be withheld from my salary until January 1996, when the error was detected.

The error was detected when I requested my personnel office to calculate the cost of my active duty military time which I could have purchased for CSRS credit. During that process it was discovered that I was in the wrong retirement system.

As a result, on February 28 my personnel office changed me from CSRS to FERS. I was not notified of this change until I later discovered the discrepancy on my leave and earnings statement on a Saturday. I happened to read it at the mail box. I knew something was deeply wrong at that time when the amount had changed from \$51,000 to \$103.

The personnel office did not officially notify me until April 3, 1996. Between April and May 1996 I had many contacts with my personnel office as well as OPM. Neither agency could provide me with any guidance on what I should do. Rather, I was advised that the resolution of the matter would require congressional or legal action.

It was suggested that I contact my local Congressman and seek his intervention. OPM advised me that they were only aware of a few people who were impacted similarly to me. My personnel office advised me that I was the only one they were aware of.

After receipt of this information I appealed to the DODIG personally and requested her intervention. Once she became aware of the problem she wrote the appropriate chairmen of the House and Senate subcommittees and requested their intervention in addressing this matter. The various responses from those chairmen revealed that they were aware of the problem and it was their hope the problem would be addressed in the 105th Congress.

To protect my interests I retained legal counsel to explore what legal remedies were available. Consequently, on July 28, 1997, 1 day before the statute ran out on my ability to file legal action, I

filed a lawsuit seeking full restitution in U.S. District Court in Washington, DC, along with four other of my Federal colleagues.

Clearly, being in the wrong retirement system has changed my whole life over the past 18 months. My retirement planning has been centered solely around CSRS. The most immediate concern, as a Federal law enforcement officer, is the welfare of my family if something should happen to me.

For example, the survivors' benefits under FERS are less than half of what my family would receive under CSRS. Additionally, there are virtually no funds in my Thrift Savings account.

My wife and I feel frustrated and bitter about how this entire matter has been handled and the fact that we've had to deplete our savings for legal and expert witness fees. The estimated financial impact over my lifetime has been estimated at over \$2 million.

My dealings with OPM, my contact with OPM has been horrid from the very beginning. At the onset, when I learned how many people were impacted, or when I asked how many people were impacted, they refused to tell me. However, I learned that there were over 341,000 people hired during that timeframe, between January 1, 1984 and December 31, 1986. With that large of a number I suspected that there were more than a few impacted. Unfortunately, Congress had directed OPM for the past 2 years to study the extent of the problem and draft legislation. OPM has continued to ignore the issue and failed to responsibly address this problem. Meanwhile the clock continued to tick on any legal action I could take. It is outrageous that a Federal agency like OPM can get away with acting as irresponsibly as they have in addressing such a significant problem with so many Federal employees that are involved. If a private sector company failed to address a problem such as this, the Department of Labor and/or the Department of Justice would intervene on the wronged employees' behalf without hesitation, and has done so.

Obviously, this same legal protection should be afforded to Federal employees as well. Throughout this entire ordeal, myself and my fellow Federal employees have been made to feel that we are somehow different and held in lower regard than the private sector.

I can't help but believe that there are thousands of Federal employees affected, because I continue to receive calls weekly from Federal employees who are similarly impacted. It is absurd that Federal employees must take legal action to ensure a viable retirement system when this situation was created through no fault of their own.

Finally, I believe that Congress should no longer wait for OPM to address the problem since OPM has ignored and defied the specific direction and will of Congress for the past 2 years. Congress should enact legislation that would simply allow those wrongly enrolled in CSRS to remain in CSRS if they so choose or transfer to FERS. The agency who erroneously enrolled the employee should bear the expense of getting that employee whole.

Further, Congress should require the agency to make the government employee whole by depositing the necessary contributions on behalf of the employee at 10 percent of the employee's wages from the date of employment to the present along with the corresponding 5 percent matching funds by the agency plus interest.

The option of investing for the period in question in either the C fund or G fund would be at the employee's discretion. Those impacted by this situation who elect to transfer to FERS Congress should provide a one time exemption on the amount that can be contributed to an employee's Thrift Savings account. Currently, the law only allows that maximum \$9,500 be deposited. This would allow the employee's agency to make a one time deposit of the calculated harm determined by the Thrift Savings Investment Board to his or her account.

Basically, that summarizes my testimony. But one of my colleagues who could not be here today——

[The prepared statement of Mr. White follows:]

Statement  
of  
Alan W. White, Ph.D.  
Assistant Special Agent In Charge  
Defense Criminal Investigative Service  
Western Field Office  
Mission Viejo, CA  
before  
The House Committee on Government Reform and Oversight  
Subcommittee on Civil Service

Mr. Chairman and Members of the Subcommittee, it is my pleasure to be here today and to have this opportunity to discuss the matter of erroneous enrollments in the federal retirement systems. It is my belief that this is a significant problem throughout the federal government and affects literally thousands of federal employees. At the request of the Subcommittee I will provide testimony about my experiences as an employee of the Department of Defense's Inspector General.

**Introduction**

By way of introduction, I am currently a GS-15 working as the Assistant Special Agent In Charge for the Defense Criminal Investigative Service (DCIS), Western Field Office, Mission Viejo, CA. The DCIS is the criminal investigative component of the Department of Defense Inspector General (DoDIG) which is headquartered in Arlington, VA.

**Appointment, Retirement Enrollment & Related Decisions**

As you requested, I will specifically address those issues mentioned in your letter. On August 26, 1984 I was hired by the U.S. Department of the Air Force as a civilian Criminal Investigator and placed in the Civil Service Retirement System for Federal Law Enforcement. On August 31 1986, I accepted a position with Department of Defense Inspector General's Office (DoDIG) and remained in the CSRS. With the passage of the Federal Employees Retirement System (FERS) Act I should have been transferred to FERS effective January 1, 1987. The DoDIG personnel office did not transfer me into FERS, but continued to classify me as an employee covered by the CSRS offset program. In April 1991 the DoDIG

personnel office documented a review of my personnel file to verify my service computation date and that I was in the proper retirement system. This review failed to detect the erroneous retirement enrollment. CSRS contributions of 7.5% of my salary continued to be withheld from my salary until January, 1996 when the error was detected.

The error was detected when I requested my personnel office to calculate the cost of purchasing my active duty military time for CSRS credit. During that process, it was discovered that I was in the wrong retirement system. On February 28, 1996 the DoDIG personnel office changed me from CSRS to FERS. I was not notified of the change by the DoDIG personnel office until after I discovered a discrepancy on my leave and earning statement of March 23, 1996. On March 25, 1996 I contacted the DoDIG personnel and was advised at that time I was in the wrong retirement system and changed accordingly. The DoDIG office officially notified me in writing on April 3, 1996.

Between April-May 1996 I had many contacts with the DoDIG personnel office as well as OPM. Neither agency could provide me with any guidance on what I should do, rather, I was advised that resolution of the matter would require Congressional or legal action. It was suggested that I

contact my local Congressman and seek his intervention. OPM advised me that they were only aware of a few people who were impacted similarly to me. The DoDIG personnel office advised me that I was the only one they were aware of.

I queried the Federal Times and learned that the problem was much larger than a few people. A subsequent article published by the Federal Times about my situation prompted literally hundreds of calls from all over the world. I shared this information with Congressman Ron Packard, my representative, and he wrote OPM on my behalf and received a form letter response. The response provided by OPM did not acknowledge the problem, instead referenced that they were conducting a study on "coverage errors".

After receipt of this information I appealed to the DoDIG personally and requested her intervention. Once she became aware of the problem, she wrote the appropriate Chairman of the House and Senate Subcommittees and requested their intervention in addressing this matter. The various responses from those Chairman revealed that they were aware of the problem and it was their hope the problem would be addressed in the 105th Congress.

To protect my interests I retained legal counsel to explore what legal remedies were available. In November

1996 I filed an administrative Tort Claim seeking restitution for the financial impact of being erroneously placed in the wrong retirement system by the DoD. On January 30, 1997 this claim was denied and cited I had six months from the date of letter to appeal the decision in U.S. District Court. Consequently, on July 28, 1997 I filed a law suit seeking full restitution in U.S. District Court, Washington, DC.

Clearly, being in the wrong retirement system has changed my whole life over the past 18 months. My retirement planning has been centered solely around the CSRS. Nearly ten years of lost TSP deposits and a 30% difference between a CSRS and FERS annual retirement annuity are quite devastating. The most immediate concern, as a federal law enforcement officer, is the welfare of my family if something should happen to me. For example, the survivors benefits under FERS are less than half of what my family would receive under CSRS. Additionally, there are virtually no funds in my TSP account. Reliance on either the survivors benefit or my TSP account as a means of support would be financially devastating to my family. The uncertainty of my retirement has created a great deal of emotional stress and strain on my wife and I. We feel

frustrated and bitter about how this entire matter has been handled and the fact we have had to deplete our savings for legal and expert witness fees. The estimated financial impact over my lifetime has been estimated at over \$2 million.

#### OPM Dealings

My contact with OPM has been horrid from the very beginning. At the onset, when I asked how many people were impacted, they refused to tell me. However, I learned that there were over 341,000 people hired between January 1, 1984 and December 31, 1986 during the interim period when CSRS was closed and FERS was enacted by Congress. With that large a number I suspected that there are more than a "few" impacted.

Unfortunately, Congress has directed OPM for the past two years to study the extent of the problem and draft legislation. They have failed to do so. Even Senator Leahy introduced Senate Bill 1287 in September 1995 to address this problem, which OPM Director Dr. King vehemently opposed. The bill died a year later in committee. When I spoke to an OPM official about why they vehemently opposed

the bill he advised me that **"it was a half-baked bill!"** I found this response to be outrageous and irresponsible. OPM continued to ignore the issue and failed to responsibly address this problem, meanwhile the clock continued to tick on any legal action I could take.

In my opinion, it is clear that OPM is not willing nor able to address this problem. As they continue to study the problem, the problem becomes larger and more costly for the Government. In my discussions with OPM their senior officials have been callous, insensitive, and quite frankly indignant. It is outrageous that a Federal Agency like OPM can get away with acting as irresponsible as they have in addressing such a significant problem when so many federal employees are involved. I have learned from an industry expert who deals with the Thrifts Savings Investment Board, that as many as 15% of those federal employees hired during 1984-1986 (approximately 51,000 federal employees) could be impacted. If that is true, that is a astounding figure! If a private sector company failed to address a problem this significant, the Department of Labor and/or the Department of Justice would intervene on the wronged employee(s) behalf without hesitation, and has done so. Senator Grassley has recently held hearings on pension matters affecting non-

Government employees in which he addressed the need to protect those individuals' retirements. Obviously, this same legal protection should be afforded to federal employees as well. Throughout this entire ordeal I and my fellow federal employees have been made to feel that we are somehow different and held in lower regard than the private sector. I can't help but believe that there are thousands of employees affected, because I continue to receive calls weekly from fellow employees who are similarly impacted. It is absurd that federal employees must take legal action to ensure a viable retirement system when this situation was created through no fault of their own. What kind of signal are we sending the American people and the millions of dedicated and hardworking federal employees when we ignore such a major issue in their lives? This is what people work for all their lives and if they cannot trust the federal government to make it right, who can they trust?

#### **Recommended Changes**

Finally, I believe that the Congress should no longer wait for OPM to address the problem since OPM has ignored and defied the specific direction and will of Congress for

the past two years. Congress should enact legislation that would simply allow those wrongly enrolled in CSRS to remain in CSRS, if they so choose, or to transfer to FERS.

Employees who were involuntarily transferred to FERS have been harmed through no fault of their own, should not be responsible for getting themselves whole, except for the 1% required contribution. Because of the financial hardship this would cause on the federal employee, the agency who erroneously enrolled the employee should bear that expense of getting the employee whole. Further Congress should require the agency to make the Government employee whole by depositing the necessary contributions on behalf of the employee at 10% of the employees wages from the date of employment to the present, along with the corresponding 5% matching funds by the agency, plus interest. The option of investing for the period in question, at either the **"C" fund** or **"G" fund**, would be at the employee's discretion. For those of us who have retained legal counsel to force the issue to get it where it is today, I believe we are entitled to full restitution of the amount specified in the law suit, including reimbursement for all legal fees associated with the suit, and be exempt from paying taxes on the settlement

amount. For those employees impacted by this situation who elect to transfer to FERS, Congress should provide a one-time exemption on the amount that can be contributed to an employees TSP account. Currently, the law only allows the maximum of \$9,500 per year. This would allow the employee's agency to make a one-time deposit of the calculated harm, determined by the Thrift Savings Investment Board, to his/her TSP account. This would also apply to those of us who have filed a law suit, obtained a settlement, and wish to make a one-time deposit into his/her TSP account. The amount and fund type should be determined by the employee.

Additionally, I believe that the Thrift Savings Investment Board, not OPM, should be tasked with the responsibility of coordinating with all branches of the Government to determine the extent of the problem and allow them to monetize the impact. A mandatory examination of all personnel files should be conducted for those employees hired between January 1, 1984 and December 31, 1986 to ensure that they are in the appropriate retirement system. The Thrift Savings Investment Board, in my opinion, would be a much more responsive and capable organization to handle this problem. I would recommend immediate passage of this legislation during this fiscal year.

Conclusion

Mr. Chairman, this concludes my statement. On behalf of myself and my fellow federal employees, who are affected by this tragic situation, I would like to thank you and the Members of the Subcommittee for this opportunity to appear before you today to discuss this important issue. I would also like to thank Ms. Eleanor Hill, DoD Inspector General, and Mr. Donald Mancuso, the Deputy Inspector General, for their support to hold these hearings and allowing me to testify without restraint.

I look forward to answering any questions you or the Subcommittee Members may have.

Mr. MICA. Without objection, we're going to extend your time so you may read the comments—

Mr. WHITE. Yes, sir.

Mr. MICA [continuing]. I understand it's relatively brief—of Deborah Monroe.

Mr. WHITE. Yes, sir.

Mr. MICA. You're recognized.

Mr. WHITE. OK. Sir. This statement is by Deborah Monroe, program assistant—GS-7—for the Department of Housing and Urban Development from Chicago, IL.

Mr. Chairman and members of the subcommittee, first of all I would like to thank Congress for deeming this to be an important issue and making it possible for this statement to be read into testimony.

I am currently a GS-7 program assistant in the multi-family branch in the Department of Housing and Urban Development HUD office in Chicago, Illinois. I was hired as a first time Federal employee in 1982 as a clerk typist (temporary) by HUD. My appointment ended and I was hired again in August 1983. The date is my service com date.

On February 23, 1995 I was notified by my personnel office in writing that my retirement category had been corrected to FERS and Social Security. My personnel office informed me that this was done because I had been erroneously placed in the wrong retirement system, CSRS.

I would like to reveal to Congress about the lack of assistance and support that I've received from my personnel office since 1995. I have received total callous and insensitivity regarding my situation.

An article published by the Federal Times on September 16, 1996 made me aware that I was not the only person that was experiencing this problem. I was told that I was the only one in this situation by my personnel office. I called Mr. Alan White, who had the article written in the Federal Times, to inform him that I had been dealing with this problem since February 1995 in vain. This is just an example of what happens to a person at my grade level and how I was treated.

It took Alan White and Barry Schrum, grades 13 and 15, to get this matter moving. I went through and spoke with the same people in my office as Mr. White did in his and wrote to everyone that he did. My results: I was told nothing could be done.

No one was willing to help me. I had been an outstanding government employee, and this was how I was treated. My personnel office displayed a hostile attitude and dealt with me in a negative and unprofessional manner. My continuous effort in trying to resolve this matter to date has been futile.

My personnel office had no idea on how to resolve this issue. I have escalated the problem all the way up to HUD Assistant Secretary, Marilyn Davis, to no avail. I attempted and was denied the opportunity for a third party to help, Mr. Linford Coleman, who is the Blacks in Government president.

I have been under an enormous amount of stress and strain and it's been a major strain on my whole family. I am mad at the system and my personnel office because this entire matter has been laughed at by many HUD officials. I was told by the legal department that if I took this matter out of HUD, I would lose.

I want to also express that had it not been for Mr. Alan White and Mr. Barry Schrum I would have lost my mind. They have been my rock. Because of these issues and the threat of downsizing our office I have no idea where retirement funds reside. And this has caused me great psychological and physical trauma.

I would like, again, to thank the chairman of the committee for taking a concern in myself and my two very good friends, Mr. Alan White and Mr. Barry Schrum. I thank Congress for allowing my statement to be read and entered into the record. And I am very sorry that I could not attend.

Mr. MICA. Thank you, Mr. White. And also thank you for providing us with the testimony of Ms. Monroe. I'd like to now recognize David Mangam of the Army War College. You're recognized, sir.

Mr. MANGAM. Mr. Chairman, I am David Mangam, a GM-14 civil servant working for the Department of the Army at the U.S. Army War College, Carlisle Barracks, Carlisle, PA. I appreciate the opportunity to appear before you today on behalf of myself and all

the other civil servants who are in a similar situation, which is, recently being notified that their employing agency made a mistake many years ago and placed them erroneously in the wrong retirement program.

I entered Federal civil service via the United States Army Europe on January 31, 1983, as an overseas limited appointee, that is, a 5-year overseas employee limitation. On January 29, 1984, I was converted to a career condition appointment and according to the agency and OPM, was correctly placed in the Civil Service Retirement System, as there were no laws otherwise at that time.

As I now understand the events, Public Law 98-369 on July 18, 1984, retroactively changed retirement program status for all employees hired post-December 31, 1983. I am a retired Army E-7 who relinquished promotion and retirement as an E-8 in order to accept continued Federal employment as a civilian (original appointment was at grade GS-12).

My decision to continue Federal service was heavily biased on the projected ability to combine my military service with continued Federal civil service with a goal to retire at 35 to 40 years of total combined service. The Civil Service Retirement System into which I was placed offered me this opportunity.

If I had been informed at the outset of civil service employment that I would not be able to fully incorporate my 20 years of military service with continued Federal service and have the option to retire after 35 years of service, then I would clearly have chosen an employment path that provided me that similar opportunity.

In August 1996, the local civilian personnel office notified me in discussions that they discovered what might be an error in retirement system placement. On November 7, 1996, I was officially notified that I was to be converted to the FERS retirement system.

Effective November 24, 1996, the personnel system changed my retirement enrollment. I requested agency and OPM review of this decision on December 4, 1996. The OPM review fully supported the agency action. The full transition of this action is still in process and could take up to 257 pay periods, which is approximately 10 years.

And even with that I will not be fully restored in the FERS system and never be equal to the full CSRS retirement I had been offered as part of my employment. This mistake will cost me more than \$30,000 per year if I am to retire after 35-plus years of civil service.

It will cost me an aggregate of approximately \$1.6 million across my projected 35-plus years of retirement. Note, my parents are deceased at age 87 and 90, and I would expect the same life expectancy.

There is no possible way that I can retire in the next 8 to 10 years under FERS unless I can obtain a settlement to offset the disparity of the decision. My wife and children share this anxiety and uncertainty with me. It has caused great turmoil in our lives and family relationships.

An additional personal cost is due to me due to increased stress and anxiety which has caused complications in my daily health. I am a type II diabetic. The rise in blood sugars causes extreme depression and fatigue on a daily basis, which requires big increases

in sick leave usage. I have applied to the agency, OPM, the DODIG, the U.S. Merit Systems Protection Board for review and correction.

I have also discussed this with the TSP board and the Defense Finance Accounting Services. All have upheld the action as in accordance with public law. The OPM reply recognized that it was clearly an agency error and they could not change the retirement coverage due to law and they have no authority over monetary settlement provided by my agency.

I applied for settlement to my agency. And although they understood the error and supported me, they could not provide settlement.

Two corrective actions are possible: Grandfathered return to the CSRS retirement and repositioning of all fund transfers and taxes correctly, reimbursement for out of pocket expenses or, two, make me whole in the FERS system and reimburse all lost interest, compound interest, military buy-in loss, retirement offset, IRS/OASDI loss, plus personal expenses.

OPM has provided support only when directly challenged. They, through the agency, did not provide all conversion information and opportunities. As an example, in 1996 the IRS retirement contribution ceiling was \$95,000 and my TSP annual contributions were under \$4,000. Therefore, I should have been offered the option to contribute the difference to back payments to TSP.

And, until pushed hard, they did not start even making up the back payment deductions for TSP. They are also not able to fully correct losses in TSP interest and compound interest due to public law. To date, they are still withholding over \$30,000 plus interest out of my previous CSRS contributions, even if they have made OASDI and FERS make-up payments from my initial total CSRS fund.

These are direct individual contributions and not required for FERS or OASDI or other legal back payments and belong to the employee. As reported to by many staff and action personnel, this problem has been recognized for more than 6 years, yet OPM policy and procedures have not fully developed, nor has this problem been fully brought to your committee for a resolution that would be equitable and fair.

I would recommend that this committee provide full relief to all Federal service employees who in good faith contracted employment with the Federal Government, by bringing into law these options: To become fully vested in FERS with Government support for losses, or to be fully grandfathered into CSRS with support for all losses incurred by these transition efforts.

Thank you for providing me the opportunity to address this concern to your committee.

Mr. MICA. I thank you for your testimony and now would like to recognize John Gabrielli, Internal Revenue Service. You're recognized, sir.

Mr. GABRIELLI. I'm an employee of the Internal Revenue Service and a member of the National Treasury Employees Union, local chapter 58, from Buffalo, NY. Mr. Chairman and members of the subcommittee, I thank you for providing me with the opportunity to tell my situation regarding my retirement.

I hope that this subcommittee will be able to provide some relief to me and others who have had similar problems. On January 10, 1983, I started with the Internal Revenue Service under a temporary appointment in the taxpayer service division. The employment was due to expire on April 15, 1983.

I was employed through a series of temporary appointments until I was finally converted to a career conditional appointment on September 30, 1984. It was at this time that I was incorrectly coded as eligible for retirement benefits under the Civil Service Retirement System, known as CSRS.

At the start of 1987, I received a computer-generated letter from the human resources division of the national office advising me that I was currently covered under the CSRS. The letter also informed me that beginning July 1, 1987, I would have the opportunity to transfer my enrollment to the Federal Employees Retirement System, known as FERS.

The letter advised me that I would receive information on CSRS and FERS that would assist me in making an irrevocable decision concerning my retirement. Subsequently, I received written information and an oral presentation comparing the two retirement systems. I elected to remain under the CSRS.

On April 14, 1993, I was summoned to a meeting with four other employees from my district. During this meeting I was informed that I was incorrectly placed in the CSRS and should have been placed under the FERS. During the meeting we were told that our district human resources branch was seeking guidance from the national office of IRS.

A series of letters passed between the district and the region, all seeking equitable solutions. Thereafter, the assistant chief counsel indicated in a letter dated November 15, 1993, that there was no statutory authority permitting a waiver from the FERS provision for me and the other employees.

In a memorandum dated October 25, 1993, from the acting chief, resources management division, I was told that effective May 5, 1991, I would be placed under the FERS. I was advised that the process of adjustments to my retirement funds had begun. I was also advised that the IRS was seeking a determination from the Comptroller General whether we could receive a refund of our CSRS contributions that could not be paid into Social Security for the years which are beyond a 3-year statute of limitations. To this date, I have not been informed of a final decision on this issue.

When it became clear that I was placed under the FERS, I enrolled in the Thrift Savings Plan, known as TSP, on September 13, 1993, I designated 5 percent of my income to be apportioned between the three funds. Later, in an attempt to make up for the 6 years that I should have had in the TSP, I transferred all moneys from the G and F funds to the C fund and started having 100 percent of my 5 percent plus matching funds invested in only the C fund.

Despite the risks involved with this strategy, I'm seeking the highest return on my investments in an effort to catch up on all the time I missed. As of August 7, 1993, I had \$13,382 in my CSRS retirement fund. When I was switched over to the FERS, 0.8 percent of this amount was applied to my FERS retirement account.

The IRS informed me that it could only pay 3 years retroactively for Social Security. The rest of the moneys that I contributed under the CSRS are the subject of the pending Comptroller General decision.

It would only seem fair for me to get back the moneys that I invested, and reinvest them in my TSP account. I have yet to see any reimbursements.

If I had been correctly informed in 1987, that I was covered under the FERS, I would have opted to place 5 percent of my gross wages into the TSP. Instead, believing that I was covered under the CSRS, I chose not to join TSP at that time.

I have lost 6 years of contributions into the TSP, as well as the agency's matching contributions. In addition, I have missed 9 years' worth of Social Security deductions. Robert Tobias, president of the National Treasury Employees Union, sent a letter to IRS on behalf of the affected employees, seeking assistance and a legislative solution. David Mader, chief, management and administration, responded that the affected individuals would "Receive full FERS and Social Security coverage in addition to retroactive agency automatic TSP contributions, agency matching benefits and lost earnings."

In the fiscal year 1996 Treasury Postal Appropriations bill, NTEU sought a solution. The language included in the legislation stated, "OPM is directed to review the IRS problem and other similar circumstances and make every effort to resolve this issue with common sense and fairness in mind. OPM is instructed to correct these problems through administrative procedures, if possible, and if not, recommend any legislative action that may be required to correct this and any other inadvertent inequities."

This bill, Senate bill 1287, introduced by Senator Leahy of Vermont, also provided Federal employees who were erroneously covered by CSRS the option to elect continued coverage under the CSRS or transfer coverage to the FERS.

In my view, legislation should be passed that would give me either the option to revert to coverage under CSRS or to remain in FERS with guarantees that all of my CSRS contributions plus matching agency contributions would be credited to my TSP account, together with accrued interest.

As the events described above unfolded I relied on the efforts that the IRS was making on my behalf. I voiced my concern about possible financial harm that I would encounter upon retirement. These efforts included an appeal to the Merit Systems Protection Board, letters to Senator Alfonse D'Amato, and discussions with NTEU.

I never had any direct dealings with the Office of Personnel Management, and am not aware of any efforts that OPM has made on my behalf to either correct or facilitate the correction of my records with the Internal Revenue Service or with the Social Security Administration.

In conclusion, I feel that some form of legislation is needed to ensure that I and the other people in similar circumstances are not harmed financially in any way from a mistake that we had no control over. I believe that every effort should be made, through proper legislation to recompense our TSP accounts to reflect the contribu-

tions that we would have made had we known that we were to be covered under FERS, a system whose main component is the TSP.

Thank you for the opportunity to provide this statement. I'd be happy to answer any questions that you have on this issue.

Mr. MICA. Thank you, and I'd like to now recognize Barry Schrum. And he's with the Department of Energy from Derwood, MD. You're recognized, sir.

Mr. SCHRUM. Mr. Chairman, members of the subcommittee, I'm pleased to be permitted the opportunity to address you concerning an egregious wrong which was done to me and others and which has already damaged me personally, both financially and emotionally, and has the potential, unless expeditiously resolved, for greater harm.

I will provide you testimony about my enrollment in the wrong Federal retirement system as an employee of the Department of Energy, Office of the Inspector General. I was first hired as a first time Federal employee as a criminal investigator by the Inspector General on December 24, 1984, and was placed in the Civil Service Special Retirement code C system.

As a criminal investigator I was subject to a 7.5 percent CSRS deduction. With the enactment of the Federal Employees Retirement System Act I should have been transferred to FERS effective January 1, 1987. I was not transferred into FERS but continued to be classified as an employee covered by CSRS.

On August 13, 1987, personnel officials advised me that I had the option of electing to participate in FERS or remain in CSRS. I chose to remain in CSRS. From that date my lifestyle and investment planning was based on a CSRS retirement.

A year later, on March 6, 1988, I was reassigned from the criminal investigator series to a program analyst series. This change should have required a reduction in my CSRS withholdings from 7.5 to 7 percent and a refund of the 5.5 percent that had been withheld.

However, after the change my retirement code remained CSRS special code 6, and payroll continued to deduct 7.5 percent, although according to OPM I was not eligible for coverage under CSRS offset. My pay statement for pay period ending April 6, 1991, indicated that my retirement coverage had been changed to the civil service offset code C.

In April 1996, OIG personnel officials advised me that I had been improperly placed in the CSRS and that my retirement classification would be retroactively changed to FERS. I was officially notified of the change in a memorandum dated June 25, 1996, from the OIG personnel office.

I was also advised that I could retroactively adjust the amount that I had contributed to the Thrift Savings Plan. In an effort to raise the funds needed to make these retroactive contributions, I sold my home. I was later advised by DOE that I had been given incorrect information regarding my ability to make retroactive contributions to the TSP.

DOE determined that adjustment to the TSP could be made over an 8-year period. On December 9, 1996, I made the first payment to my TSP. I withdrew \$4,936 from savings and forwarded it to the Department of Energy. DOE also reminded me that in order to

completely fund my TSP I would be required to remain in Federal service with no breaks for an additional 8 years and make the remaining seven lump sum payments.

I would be required to provide approximately \$35,000 over 8 years in order to get TSP matching funds from the Department of Energy. My wife and I have completely rearranged our lives and financial planning in an attempt to meet these requirements.

Between April and July 1996, I had many contacts with the Inspector General and Department of Energy personnel as well as OPM. All advised me that resolution of this matter would require congressional or legal action. OPM advised me that they were aware of only a few people who were impacted similar to me.

To protect my interests I retained legal counsel in May 1997, and my attorney filed an administrative tort claim seeking restitution for the financial impact of being placed in the wrong retirement system. And on July 28, 1997, I filed a lawsuit seeking full restitution in the U.S. District Court in Washington, DC.

The uncertainty of my retirement and future lump sum payments to the TSP has created a great deal of emotional stress and strain on my wife and me. We are bitter and frustrated about this matter and how it has been handled, and the fact that we have had to spend a great deal of our savings on legal and expert witnesses. Over 2 years ago Congress tasked OPM to explore the extent of the problem and to draft legislation that would correct the problem. OPM has failed.

OPM continues to ignore the problem and has failed to responsibly address the matter. I believe that Congress should no longer wait for OPM to address the problem. Congress should immediately enact legislation that would correct these wrongs and grant relief to innocent Government employees caught in this situation.

Congress should direct each agency which erroneously enrolled an employee in the wrong retirement system to bear the expenses of getting the employee whole, to include completely funding the TSP, and do so immediately. For those of us who have retained legal counsel, I believe we are entitled to full restitution to the amount specified in the lawsuit.

With respect to the subcommittee's request for review as to the necessary changes in the law, I am providing a copy of the July 21, 1997, two-page letter to my attorney, Thomas J. O'Rourke, from Sanford J. Parnes, counsel to the Inspector General.

I ask that this letter be identified and received as an exhibit. Mr. Parnes asserts that the Department of Energy's authority to pay my claim for damages is a threshold issue that must be addressed prior to entering specific mediation over amounts potentially owed. In other words, DOE cannot even discuss the dollar amount of damages until he is satisfied there is legislative authority to pay it.

Although I believe that this subcommittee would have greatly been assisted if DOE had been willing to negotiate specific damages, Mr. Parnes believes there is a need for additional legislation that expressly confers authority for Federal agencies to pay such damages.

Mr. Parnes makes several related statements to indicate a need for Federal legislation in order to correct the problem that I and

other Federal employees are facing as a result of being misclassified as CSRS rather than FERS employees.

Thus, Mr. Parnes reports that the Department of Justice must preapprove payments under the Federal Torts Claim Act. And DOJ has said it will not approve payments under the Federal Torts Claim Act for these purposes.

It seems to me that the Federal Torts Claim Act needs to be amended to allow injured Federal employees like myself a form of redress. Mr. Parnes also cites a February 1989 decision of the Comptroller General which states that, "The Department of the Interior is without authority to make payments to employees' Thrift Savings Plan accounts for lost earnings on issues of deficient agency contributions resulting from administrative error because earnings on contributions are a form of interest not expressly provided for by interior appropriations, and such payments are not otherwise authorized under the back pay act."

Again, speaking as a lay person, it seems to me that this Comptroller General's decision points to the need for appropriate legislation as well as legislation amending the back pay act.

Mr. Chairman, this concludes my testimony. On behalf of myself and my fellow Federal workers who are affected by this hard situation, I would like to thank you and the members of the subcommittee for this opportunity to appear and discuss this important issue.

I would also like to thank many of the Department of Energy and Inspector General employees for their support throughout this ordeal. I look forward to answering any questions you and the subcommittee members may have. Thank you.

[The letter referred to follows:]



**Department of Energy**  
Washington, DC 20585

July 21, 1997

Thomas J. O'Rourke, Esq.  
Shaw, Bransford & O'Rourke  
Attorneys at Law  
815 Connecticut Avenue, N.W.  
Suite 800  
Washington, D.C. 20006

Re: E. Barry Schrum

Dear Mr. O'Rourke:

Supplementing my July 2, 1997, letter to you, we have met with Phyllis Hanfling, the Director of the Department of Energy's (DOE's) Office of Dispute Resolution (ADRO), to discuss mediation concerning E. Barry Schrum's claimed losses in connection with his retirement plan misclassification. We have encountered some obstacles, however, and feel that we should advise you of their potential impact on mediation efforts.

On July 10, 1997, we met with Ms. Hanfling to discuss potential mediation efforts. Prior to that meeting, we were informed by the Office of General Counsel (OGC) that there are significant obstacles to paying this claim; specifically, we were asked under what legal authority we could make additional payments to your client. OGC also notified us that it has been informed that the Department of Justice, which must pre-approve certain agency payments made under the Federal Tort Claims Act, will not approve payments under the Federal Tort Claims Act for this purpose.

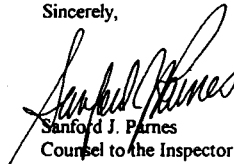
Furthermore, we have been made aware of a February 1989 decision of the Comptroller General which states that "[t]he Department of the Interior is without authority to make payments to employee Thrift Savings Plan accounts for lost earnings on insufficient agency contributions resulting from administrative error because earnings on contributions are a form of interest not expressly provided for by Interior appropriations and such payments are not otherwise authorized under the Back Pay Act, 5 U.S.C. § 5596." Matter of: Agency Authority to Pay Lost Earnings on Contributions to Employee Thrift Savings Plan Accounts, 68 Comp. Gen. 220 (1989).

Because we understood that Mr. Schrum's situation is not unique, we have considered and submitted draft legislation to the OGC which would create consistent handling of these complaints, Governmentwide. OGC has informed us that the Office of Personnel Management (OPM) is presently studying this issue, and that congressional hearings may

soon be held. We have also been advised that OPM expects congressional action during this session of Congress. This legislation, among other things, could authorize Federal agencies to pay out of appropriated funds for claims like Mr. Schrum's. The Office of Inspector General encourages a Governmentwide solution and has stated so in a letter to the Director of OPM.

We discussed all these issues at our July 10th meeting with Ms. Hanfling. We believe that the DOE's authority to pay such a claim is a threshold issue that must be addressed prior to entering specific mediation over amounts potentially owed. We would welcome your opinion on this issue.

Sincerely,

A handwritten signature in black ink, appearing to read "Sanford J. Parnes", is written over a horizontal line.

Sanford J. Parnes  
Counsel to the Inspector General

Mr. MICA. I thank you for your testimony. And I think we've heard testimony from all of our witnesses. They've literally been through Hell in this matter. It's embarrassing for the Government in bungling in such dramatic proportions to each of you personally.

Mr. Schrum, did you testify—and let me get this straight—that you were advised that you could make a lump sum payment, and you sold your house?

Mr. SCHRUM. Yes.

Mr. MICA. And then, after that, you were told that you couldn't make that payment?

Mr. SCHRUM. Yes, Mr. Chairman, I was.

Mr. MICA. So you sold your residence on advice from Federal personnel?

Mr. SCHRUM. From my personnel office—told me that I could make the lump sum payment of some approximately \$35,000. And then after I sold the house the Department of Energy's payroll people, personnel people came back and told me that it was incorrect, that I could not make such a payment.

Mr. MICA. Unbelievable. Mr. White.

Mr. WHITE. Yes, sir.

Mr. MICA. Mr. White, you called the personnel office, you said. Now, your situation goes back to when, 1984?

Mr. WHITE. Yes, sir. I was hired in August 1984. August 26, 1984.

Mr. MICA. And there was some review, we understand, of your case, of your personnel situation in 1991?

Mr. WHITE. Yes, sir, in April 1991.

Mr. MICA. There was no problem identified. In 1996, you called your personnel officer. And what did he say?

Mr. WHITE. In 1996, the only way that this came about or was detected—and I must interject real quick, I'm glad it was caught—

Mr. MICA. This is when you got a notice?

Mr. WHITE. I had requested that my personnel file be reviewed to determine how much it would cost me to pay for deposit for my military time. During that review, they detected, "This guy's in the wrong retirement system." And they sent the appropriate standard form 50's over to finance to effect that change in February. I did not find out about it until a month later, until I received my leave and earning statement and I noticed the difference between the two balances, the former—

Mr. MICA. Is that in 1996?

Mr. WHITE. Yes, sir. And that was—

Mr. MICA. So you called your personnel office?

Mr. WHITE. I'm the one that initiated the contact with my personnel office.

Mr. MICA. Right. And what did the personnel officer say?

Mr. WHITE. They were sorry. They had been meaning to contact me a month ago, but they had been dreading the call, quite frankly, "since you've asked." That was the quote/unquote comment.

Mr. MICA. His comment was?

Mr. WHITE. "I have been dreading this call for a month, Al." That was the response that I got.

Mr. MICA. Was someone else trying to comment on their particular situation when I was talking to the first witness? No. OK. I didn't want to ignore anyone; I thought someone was trying to get my attention.

Have any of you received a full accounting of funds that were in your CSRS account before corrections to your enrollment were made? Have you?

Mr. SCHRUM. No, sir. I have not.

Mr. MICA. Mr. Gabrielli.

Mr. GABRIELLI. No.

Mr. MICA. Mr. Mangam.

Mr. MANGAM. I received a full accounting of what funds were there and what the distribution of those funds were made to date. But not all of those funds have been distributed.

Mr. WHITE. And I have not to this date.

Mr. MICA. You have not. And it's my understanding that legislation was introduced in 1995.

Mr. WHITE. 1995.

Mr. MICA. And that legislation possibly would have resolved this problem. And it's my understanding also that OPM opposed this legislation. Is that your understanding also?

Mr. WHITE. Yes, sir. That's what I was told.

Mr. MICA. OK. Now, one of the purposes of this hearing is to find a solution. And one thing that's been recommended to me is that you all be placed back into the old system—CSRS. Would that be acceptable, Mr. White?

Mr. WHITE. Sir, based on the harm that I've incurred right now, had I been in FERS from day one, that would have been better for me. Had I known from day one—I mean, the calculations now.

At the time that's what I wanted. But with the accounting or lack of accounting of my civil service trust fund right now, I would like to get whole in FERS. That would be my first option. If that were not an option—since they've already made the change. That's what I would prefer personally.

Mr. MICA. Mm-hmm.

Mr. WHITE. Because it has been very traumatic for me. And for me to go back now. I would prefer that option if given that option.

Mr. MICA. Each of these cases have different levels of trauma.

Mr. WHITE. Sure.

Mr. MICA. For Mr. Schrum, I mean, to sell his house.

Mr. WHITE. Sure.

Mr. MICA. And then be told you could put the money in to make it up and then be left in that situation is mind-boggling. I know each of you have different degrees of anxiety about this. Mr. Mangam, would this be acceptable?

Mr. MANGAM. Since that's what I originally expected out of this employment contract, that would be fine with me as long as my other costs were taken care of and things were converted.

Mr. MICA. Mr. Gabrielli.

Mr. GABRIELLI. Again, at the time I wanted to stay in CSRS because I compared the two systems. But now I have invested in the Thrift Savings Plan. I think I would prefer to stay in FERS, but only with the condition that I could have my CSRS contributions put in there with matching funds and interest that would have ac-

crued since 1987, when I would have been eligible to join the TSP had I known I was in the new retirement system.

In my statement I indicated that I think we should have the option to choose between the two. I think there's going to be a lot of administrative nightmare to figure out all the matching funds. If I was to go back to CSRS they'd have to take back the matching funds and all the interest that generated over the last few years.

I'd still like the option, you know, after it was planned out, how it would—the smoothest possible transition. Then I would make a choice at that time. But—

Mr. MICA. Thank you. Mr. Schrum.

Mr. SCHRUM. I would not want to go back. I would like to just remain where I am. I've already started making my contributions. I just would like to be made whole and remain where I am and not have to have this burden of worrying about the next 8 years of having a RIF. Because if I have 1 minute of break in Federal service my wife loses all my benefits.

Mr. MICA. Well, it doesn't sound like there's a simple solution. And each of the individuals involved just before us, and the dozens, probably hundreds and maybe thousands of others, have made different plans or are affected differently as far as Social Security, Thrift Savings, their plans to enter FERS or other retirement arrangements. So we've got a very complicated situation that may require a number of legislative and administrative remedies.

I will yield now to Mr. Cummings, our ranking member.

Mr. CUMMINGS. I want to thank all of you for being here. As I was sitting here I was saying to myself, I wish the agency people could sit where we're sitting so that we could see the pain on your faces.

And it really—I could see when Mr. Schrum was testifying, I could see the pain on your face, Mr. White. It was very clear. So we're going to try to find a solution to this.

But let me just ask you all a few questions. Mr. White, when you were testifying and you read the letter of Deborah Monroe?

Mr. WHITE. That is correct.

Mr. CUMMINGS. I take it that you all know each other. She referred to Mr. Schrum. Can you tell me—I take it that that's accurate?

Mr. WHITE. Yes, sir.

Mr. CUMMINGS. And how did you all come together?

Mr. WHITE. This was prompted as a result of the first Federal Times article that was on July 1, 1996. That's when I went public with this issue. I knew that I wasn't the only one. And I knew that there weren't only a few impacted. I suspected more.

And I was told by the Federal Times that there were other employees. So they ran an article. So as a result of that I got literally hundreds of calls from all over the world, all over the world. My name was mentioned in there as well as my phone number. That's where I met Mr. Barry Schrum and Deborah Monroe.

And the original three of us have been together telephonically. Today was the first time that I've ever met Barry Schrum, although I feel like he's a brethren. Same thing with Deborah Monroe. I feel like she's a sister of mine.

I mean, we've been through Hell, quite frankly, over the last 18 months trying to figure out what it is we need to do to get this thing fixed. And I extremely feel sorry for her, because, as she mentioned, she's run into a number of stumbling blocks and has no one to help her there.

At least some of us had some experience, Barry and I, in what we thought we needed to do to pursue this in the most logical, professional, but yet administratively correct process. Deborah did not.

But we were there from day one with her. And we've gone through countless hours of reliving the emotional things, how your life is turned upside down. In things like this, it's just been a tremendous relationship, not necessarily that we wanted it to come together because of this situation, but it's just unfolded and evolved.

And that's why she wanted us to read her testimony.

Mr. CUMMINGS. You had testified that this whole situation has cost \$2 million. Can you give us an idea of how you came up with that figure?

Mr. WHITE. Yes. I'd be more than happy to. When asked would I want to transfer now, this is why I mentioned that. Had I been appropriately placed in FERS from day one, with the amount that I could have contributed, the full 10 percent plus the pre-tax profit, I would have gotten more each year as far as real income, not to mention the 5 percent matching funds.

And had I invested in the C fund, which I'm currently doing, for the brief time I've been in FERS, over the lifetime, based on my salary as a Federal law enforcement officer—as you're aware, I can retire earlier. So the impact, I pay more up front.

But the consequence to me, for example, just up front, is a difference of 30 percent in annuities under FERS versus CSRS. Right off the bat it's 30 percent. Now, had I been able to contribute fully to age 50 or even 57, collectively that's the combined impact pre-tax—which this amount has been confirmed by an industry expert that provides these type of monetary damages both to the Government as well as to the private industry. That's why this amount is very significant to me and why I'd prefer to stay in FERS.

Mr. CUMMINGS. Your dealings with OPM have not been good, have they?

Mr. WHITE. No. Not at all. My contact with them—and I've been around a long time. And I understand that everything doesn't revolve around a single individual. But I would expect that if a 15 had contacted you, you would take it a little bit serious, as a senior Federal employee, and at least address this issue, recognizing that not that it just affected me, but it affected a number of people.

But I didn't get that. They pointed the finger at Congress. And it just became something that was the same old song and dance. I got a number of form letters back, even from President Clinton—it's the same form letter I got back from the Office of Personnel Management, the only difference was, on behalf of the President, we'd like to thank you.

But the bottom line was, it was my problem, my agency caused it, there's nothing we can do, and we're looking at coverage errors; we're studying the problem.

Mr. CUMMINGS. How high up did you go in OPM, do you know?

Mr. WHITE. I went—I don't know what his grade is—but I went to the Chief of Retirement Policy Division, Mr. John Landers. Actually, his boss, too, I originally talked to at the recommendation of my Congressman, Congressman Ron Packard, was Mr. John Panagakos.

I made him aware of the problem in April 1996. That's when I had the first dialog with him.

Mr. CUMMINGS. April 1996?

Mr. WHITE. Yes, sir. April 1996. And that's when I was advised that there was basically nothing that they could do. They were studying the problem. It was going to take a congressional fix.

Repeatedly I asked, please, that's one thing I would like to know—we didn't jump from a to z on this. We went through the entire process from MSPB, OPM.

Mr. CUMMINGS. So in other words, you were trying to work with him?

Mr. WHITE. Absolutely. From start to finish. What do we need to get this problem fixed? We got nowhere. And, again, we got the standard reply form letters which not only me but my colleagues got back, as well, saying, "It's not our problem. We're studying it."

I asked Mr. Landers as recently of February this year. I said, "When do you think you will have legislation drafted?"

"I don't have any idea. We're waiting on the administration."

I said, "Aren't you a part of the administration?"

He said, "Yes. But I have no idea, Mr. White."

I said, "So, what you're telling me is that I have no recourse but to file legal action."

He said, "Well, it sounds to me like that's your only recourse."

Which was rather unfortunate. But that's where I've been in my agency, even though they made the original wrongdoing in this. They relied on OPM to provide them guidance on this. And they have not got the same two answers twice, either.

Nor have they even been responded to. They wrote them in July of last year, in 1996, and my IG never got a response back from them also. So I'm not the only one who is being shunned on this particular issue. I mean, you have a Presidential appointee that doesn't even get a response back. Something is wrong. And, of course, obviously Congresswoman Morella hasn't got a response, either. So that's rather indicative of how people are treated. So—

Mr. CUMMINGS. Mr. Schrum, let me ask you just a few questions. You testified that OPM Director King opposed Senator Leahy's bill, is that right?

Mr. SCHRUM. Yes.

Mr. CUMMINGS. Were you given any reasons for that, do you know?

Mr. SCHRUM. The only response—I have never—I have made numerous calls to OPM. I stay in touch with Alan. And the reason I know that is the documentation that he got and what we found out about Senator Leahy's bill. They've never even had the decency to respond back to me even on a telephone call.

Mr. CUMMINGS. Hmm.

Mr. SCHRUM. My Congresswoman, she wrote the letter. And, obviously, they didn't think that was important, either, so they never responded back to her.

Mr. CUMMINGS. This is very painful for you, isn't it?

Mr. SCHRUM. Yes, it is.

Mr. CUMMINGS. Mr. Gabrielli, you indicated that the Treasury Department told your agency, IRS, that OPM was unwilling to seek a legislative solution. Were you given any reasons for that?

Mr. GABRIELLI. No, I wasn't.

Mr. CUMMINGS. Hmm.

Mr. GABRIELLI. I'm not aware of any reasons.

Mr. CUMMINGS. I'm sorry, were you finished?

Mr. GABRIELLI. Yes.

Mr. CUMMINGS. Oh, I'm sorry. Let me just ask you one last question. Mr. Mangam, am I pronouncing that correctly?

Mr. MANGAM. That is correct.

Mr. CUMMINGS. You testified that the error made in your case will cost you more than \$30,000 a year? Is that what you estimated?

Mr. MANGAM. That is correct.

Mr. CUMMINGS. How did you come up with that figure?

Mr. MANGAM. Part of my retirement will be based on bringing my military service into my Federal combined service retirement. And if I were to retire at age 55 and continue to work in some other endeavor, then any income I made over \$8,000 and some dollars a year would reduce my annuity by a like amount until I could get to zero.

I had planned on working from 55 to 65 as a consultant or something else and banking, basically investing the funds between those years. If my annuity from the Government was to be reduced to almost zero for those 10 years, I would not be able to invest that money, although I would be getting the retirement of some \$34,000 in FERS versus some \$49,000 in CSRS. A little bit convoluted.

Plus I expect to live to 90 like my parents. So, with 30 years of real retirement on top of another 5 to 10 years of working, you can see how that multiplies. Thirty times \$30,000 is \$900,000 alone without taking a look at the reinvestment opportunities for 10 years of working when I have zero annuity due to the Social Security offsets on the FERS retirement.

Mr. CUMMINGS. Well, I just want you to know that I'm hoping that you live to be more than 90. And I want to be here with you so I can say happy birthday.

Mr. MANGAM. Thank you. I hope so, too.

Mr. CUMMINGS. Thank you very much.

Mr. MICA. I thank the gentleman. I hope I can be at that party to blow out the candles. But I'd like to recognize, now, the gentlelady from Maryland, Mrs. Morella.

Mrs. MORELLA. Thank you, Mr. Chairman. I heard Mr. White, Mr. Schrum mention it. But let me just ask all of you. Have any of you received any assistance from, No. 1, OPM, or your own agency? Have any of you been able to sit down with somebody from that agency who told you how they could remedy, resolve the situation, to give you the kind of advice, counsel that you deserved?

Mr. WHITE. Mrs. Congresswoman Morella, OPM has provided absolutely no assistance to me.

Mrs. MORELLA. Mm-hmm.

Mr. WHITE. Second of all, once my IG became aware of this, she did get involved to the extent that they could. She wrote letters, she followed up. But they, too, had to rely on OPM for guidance, which—we have been provided conflicting guidance on how to handle my issue, from the funds disbursement to you name it.

There has been no definitive guidance at all. As of today I still don't know where my funds are. All I know is that some of my civil service funds paid my organization's responsibility for FICA taxes, to what extent, I don't know.

Mrs. MORELLA. Mm-hmm.

Mr. WHITE. So, again, I think the central theme or burden clearly rests with OPM.

Mrs. MORELLA. So you get some comfort from a representative from your agency—

Mr. WHITE. From Ms. Eleanor Hill and Don Mancuso, correct.

Mrs. MORELLA [continuing]. But no figures, facts, avenue, program, nothing from OPM?

Mr. WHITE. No, ma'am.

Mrs. MORELLA. Mm-hmm. Right. Mr. Mangam.

Mr. MANGAM. The local agency has been very supportive in trying to ferret out information and get decisions. But they've relied on the higher agency, being Department of Army, who has gone to OPM and sought answers. The answers coming back are basically what you've heard read into testimony.

It's a problem. It's based in law. And go seek your own resolution. And they have not provided very clear-cut policy or procedures in rectifying any of the transition problems that are involved in this. As I testified, to date they have not provided a policy of what to do with the residual CSRS funds, which there is, in my case, \$32,000—some out there which has been laying fallow since last November, not gaining interest. And they have said that they will never pay interest on that. So it's just laying there.

That's just one small example. The local command has been very supportive. But above that, the support policy procedure is not there.

Mrs. MORELLA. Mm-hmm. Mr. Gabrielli.

Mr. GABRIELLI. When the problem came to light, again, as I said, the Internal Revenue Service sought guidance through the regional office, and the region through the national office, and Treasury sought opinions from OPM. And also the district director in my district at that time had written letters on my behalf.

The agency tried to do something. But ultimately it was OPM who came back and cited law that there was nothing in the provisions of law that would allow them to make any concessions to allow me to stay in CSRS. I never dealt with OPM directly myself.

Mrs. MORELLA. So, basically, you got tea and sympathy from your agency, but no resolution.

Mr. GABRIELLI. There was a lot of hand wringing and—

Mrs. MORELLA. Right. And no resolutions from OPM.

Mr. GABRIELLI. Sure.

Mrs. MORELLA. And you didn't really deal with OPM, Mr. Gabrielli. Mr. Schrum, you stated that in 1987 you were given the option of switching to FERS, but no one told you that you were ineligible to stay in CSRS. Is that correct?

Mr. SCHRUM. That is correct.

Mrs. MORELLA. Absolutely ridiculous. So, after their initial error, they had another opportunity to see that they put you in the wrong system, but it took them several more years.

Mr. SCHRUM. That is correct.

Mrs. MORELLA. Correct. Absolutely unbelievable.

Mr. SCHRUM. And in 1991 they again put me in the wrong retirement system when they put me in the civil service offset. So that was what? The third time?

Mrs. MORELLA. I want to thank all of you for being here, because it's difficult. You've been victimized already by the system, and then to come and to reiterate all of that, to go through it all again, is pretty anguishing, and I appreciate it.

Now, some of you have filed lawsuits and some of you have not. What do you hope to get from the lawsuits?

Mr. WHITE. Personally, what I hoped to get from the lawsuit was to be made whole. Since I had already been changed to FERS—and that's in response to Congressman Mica's comment. That's the track that I'm pursuing now. I've accepted the fact that's what I'm in. And I expect to get whole.

I expect to get compensated fully. And I don't know what sort of restitution I would get for emotional strain and anguish, but I have followed this from—again, going through every legitimate process possible which has forced me now to take legal action to do that. So whatever the court decides is appropriate to address my particular situation as well as—there's four others of us—then so be it.

But we've been out an extensive amount of money—legal fees—to get just to this point. Not to mention expert witness fees. Which, you talk about outrage. That outrages me more than anything, that I had to spend my own money to sue to get to where we are today. That outrages me more than anything.

Mrs. MORELLA. Have your attorneys given you any idea of how long the case would take?

Mr. WHITE. No. We had no idea. Monday—the statute ran out for me on Tuesday of this week. We waited until the last possible minute. And Monday it was filed. The 28th—this Monday.

Mrs. MORELLA. Any of the rest of you who have attorneys like to comment on that? What you hope to gain from it? How many of you have attorneys? You also?

Mr. MANGAM. I also have an attorney. But my goal is to get whole, whether that is returning back into CSRS and return of the funds that have been—my word—absconded with, and made whole monetarily and put back into the CSRS. Failing that, then I need to protect my family and myself and my continuing life. And so that's my goal. And it will cost money. But I hope that the restitution will happen. And I've been told that it can take 1 to 2 years.

Mrs. MORELLA. One to two years. Mr. Schrum, you hired an attorney?

Mr. SCHRUM. Of course, my attorney is Mr. White's attorney. Just like Alan said, I want to be made whole.

Mrs. MORELLA. Mr. Gabrielli, you did it through the union. Do you have an attorney?

Mr. GABRIELLI. No.

Mrs. MORELLA. You didn't, did you?

Mr. GABRIELLI. No. Frankly, I don't have the means to pursue this through the courts. I just don't have the means.

Mrs. MORELLA. That was what I was going to ask. Why did you not. Any other comments that you'd like to make that we haven't asked that you think link up to our resolution of this? You know, we're going to have the agencies, as you know, right after this panel—are going to testify.

Mr. WHITE. Mm-hmm.

Mrs. MORELLA. Is there something you want us to ask them besides the fact, why did you do this, what are you going to do about it, look at what you've done to people's lives? This is your last shot.

Mr. WHITE. It's not so much a question as it is a recommendation that I think, based on the seriousness of the situation and the responsiveness of the Thrift Savings Investment Board, that they should be the one that should monetize the impact.

Mrs. MORELLA. Mm-hmm.

Mr. WHITE. Look at this issue as opposed to OPM. It's clear it's not a high priority issue. It's something that TSP—the Thrift Savings Investment Board—was acutely aware of in 1991, made OPM aware of this. I throw that out as a recommendation that, I think, to follow Mr. Cummings' comment.

If you want a time table, I think that organization would respond and would be able to monetize the impact very quickly and get you the answers you need for those who have been harmed.

Because there are literally thousands who don't even know. And there are some right now that know that have not been transferred to FERS. I've received dozens of calls from fellow law enforcement officers that were hired in 1985 that say, "I am still in CSRS, and my organization has not transferred me yet. What should I do?"

You know, I've just told them to stay tuned, hopefully Congress can get to this. Which, leaving them in CSRS would be the answer for those people. But for those of us who have come out of the woodwork, so to speak, and have had to go through this—

Mrs. MORELLA. You mean, some have been changed because they were incorrectly kept in CSRS and then changed to FERS, some who have been changed don't even know they have been changed?

Mr. WHITE. Don't even know.

Mr. SCHRUM. That's right.

Mrs. MORELLA. Others have not even been changed that have gone beyond that time limit?

Mr. WHITE. That's correct.

Mr. SCHRUM. Right.

Mr. WHITE. There are many other—

Mrs. MORELLA. It's a total flub-up.

Mr. SCHRUM. Yes.

Mr. WHITE. Yes, ma'am. And there are people that are aware they're in the wrong system because of reading the Federal Times and articles in the Federal law enforcement officers association that know that they're in the wrong system based on what I have advised them, but their organization has not detected it yet.

So they're in a precarious situation. What do I do? Do I notify them? They don't want to wait until the day they walk out the door to have this detected. So that's why, again, I applaud all of you for having these hearings. It's so timely, so critical.

And if it doesn't get resolved now the problem is going to be so costly for the Government either through litigation or just downright getting people whole at some point in time. It needs to be fixed, and fixed now.

Mrs. MORELLA. Anyone else want to make any comments? Then I yield back my time. Thank you, Mr. Chairman.

Mr. MICA. I thank the gentlelady. I am going to dismiss this panel. But I want to thank—I think Mr. White and Mr. Schrum have also helped Deborah Monroe with some of her legal expenses.

Mr. WHITE. Yes, sir.

Mr. SCHRUM. Yes.

Mr. MICA. That's most admirable. And I understand NTEU has helped support you and also bring you here today, Mr. Gabrielli. And we're grateful for their cooperation so we can show this committee and Congress the direct effect that this has had on some of our employees and how it has affected them personally.

And I might say also, to you, Mr. Schrum, and others that have been so dramatically personally affected, that the system does work. Sometimes it does take some time.

Mr. SCHRUM. Mm-hmm.

Mr. MICA. You've tried to work through the system. And we appreciate that. And through your representatives. We will find a solution to this problem. And sometimes it's slow and cumbersome. And it takes a while to get to us and get our attention.

But do hang in there and have faith. And we'll try to make you and your retirement benefits whole. So we thank you for your cooperation and appreciate your being before the subcommittee this morning. I'd like to call our next panel. You're excused.

Mr. WHITE. Thank you.

Mr. MICA. Our next panel this morning is William Flynn, who is the Associate Director of the Retirement and Insurance Service of the Office of Personnel Management, Sarah Hall-Ingram, Associate Chief Counsel, the Employee Benefits/Exemption Organizations of the Internal Revenue Service, Dr. Diane Disney, Deputy Assistant Secretary of Civilian Personnel, the Department of Defense, and Linda Oakey-Hemphill, who is an agency retirement counselor with the Department of the Treasury.

Some of you have been with us before and know that this is an investigations and oversight subcommittee of Congress. We do swear in our witnesses. If you would please stand, and raise your right hands.

[Witnesses sworn.]

Mr. MICA. The witnesses answered in the affirmative. We're going to go directly first to Mr. Flynn and then we're going to intervene for some quick questions because our ranking member must leave. But Mr. Flynn, you're recognized.

**STATEMENTS OF WILLIAM E. FLYNN, ASSOCIATE DIRECTOR, RETIREMENT AND INSURANCE SERVICE, OFFICE OF PERSONNEL MANAGEMENT; SARAH HALL INGRAM, ASSOCIATE CHIEF COUNSEL, EMPLOYEE BENEFITS/EXEMPTION ORGANIZATIONS, INTERNAL REVENUE SERVICE; DIANE DISNEY, DEPUTY ASSISTANT SECRETARY, CIVILIAN PERSONNEL, DEPARTMENT OF DEFENSE; AND LINDA OAKLEY-HEMPHILL, AGENCY RETIREMENT COUNSELOR, DEPARTMENT OF THE TREASURY**

Mr. FLYNN. Thank you, Mr. Chairman and members of the subcommittee. On behalf of Jim King, the Director of OPM, we appreciate the opportunity to be here today to discuss the subject of erroneous enrollments in the Federal retirement systems.

As you've pointed out, Mr. Chairman, in the Senate committee report attached to the Treasury, Postal Service and General Government Appropriations Act of 1996, OPM was directed to review the problem of employees who have been placed in the wrong retirement system.

Now, in addition to OPM, a solution to this problem affects the policies and operations of the Federal Retirement Thrift Investment Board, the Social Security Administration, and the Treasury Department.

Before our report can be issued more discussions with those agencies on an approach to this issue are needed. I'm hopeful that we'll be able to present our report, including recommendations for a legislative solution to the Congress in the near future.

Nonetheless, at today's hearing I would like to share with the subcommittee our perspective on this problem as well as the general objectives we believe should be sought in molding a remedy.

Retirement coverage errors are generally the result of difficulties government agencies have experienced in the still-ongoing transition that began in 1984 from the Civil Service Retirement System [CSRS] to the Federal Employees Retirement System [FERS]. As you know, two sets of statutory transition rules must be applied. Both contain various exceptions to Social Security coverage. And one set of rules required retroactive amendments to coverage determinations made during a period of time in 1984. The statutes also created the hybrid retirement system known as CSRS offset.

When agencies find a mistake in an employee's retirement coverage, they are required by the law to correct it currently. After discovery of a coverage error, the law requires that an employee's defined benefits coverage, including Social Security, be fully corrected with retroactive amendments to retirement records and reallocation of employee and agency contributions. Coverage errors that negatively affect the employee's defined contribution plan participation are those that may in fact disadvantage the employee, as you've heard today from the witnesses earlier. An employee's participation in the Thrift Savings Plan is a matter of personal choice affected by the employee's available income and personal retirement planning. Those decisions, in turn, rely on correct coverage determinations by the employer.

Now, apart from the 1 percent government contribution and its associated earnings, which must be deposited for all employees covered in the Federal Employees Retirement System, regardless of

whether or not the employee contributes; the total amount of the agency's make-up contribution when errors are discovered depends on the employee's past contributions to the Thrift Savings Plan and his or her future salary withholdings to make up for the period of the erroneous coverage.

This approach to making an employee whole after retirement coverage error has been determined has significant gaps, again, as you have heard from the witnesses earlier this morning. First, because it relies on future salary withholdings, an employee whose coverage error is discovered upon separation does not have an opportunity at all to make up lost contributions. An employee who does not have income available for this purpose can be similarly affected. Second, if an employee did not participate in the Thrift Savings Plan during the period of the error, retroactive earnings on make-up contributions are calculated using the G fund as opposed to the other fund rates of return. And third, some highly paid employees may be unable to maximize their Thrift Savings Program benefits due to the tax code's elective deferral limitation that applies to such contributions.

This is a general outline of the problem. OPM does believe that a comprehensive solution is desirable, one that addresses situations in which a long-term coverage error has been corrected as well as those in which the error has not yet been discovered.

In addition, we believe the solution should address current and former employees and retirees and survivors since members of each group have been affected by retirement coverage errors.

I would like to lay out for the subcommittee our major objectives for this remedy. OPM recognizes that some employees have been truly disadvantaged by being placed in the wrong retirement system.

Our first and most important objective is that a remedy should demonstrate that the Government is committed to an equitable solution for these employees and their families. Because retirement planning is a career-long affair, a long-term error can be truly harmful. This is the case where an employee misclassified as Civil Service Retirement System or offset must be retroactively switched to the Federal Employees Retirement System, but because of the error did not save for retirement to supplement the defined benefits of FERS and Social Security benefits.

Our second major objective is to provide employees with a choice between corrective coverage and a benefit the employee reasonably expected to receive. Employees should not simply be forced to retain erroneous coverage following discovery of a long-term error. Some employees who have been misclassified as Civil Service Retirement System or offset may prefer a benefit equivalent to what they have come to expect. But an employee who contributed a significant amount to the Thrift Savings Program may feel equally strongly that retaining Federal Employees Retirement System coverage would be beneficial. And you've heard some comments to that effect, again, from the witnesses earlier this morning.

Our third objective is that the options provided to employees should be easy to understand. Both for the people who must counsel employees and for the affected individuals, we should avoid complex rules, conditions, and exceptions.

I trust that we can build a choice that leaves each individual with a clear understanding of his or her retirement coverage, enabling him or her to plan for their income security in retirement.

In conclusion, Mr. Chairman, I expect that a proposal for a comprehensive remedy to the current problem will be sent to the Congress in the near future. In the meantime, I hope this information has been helpful, and I'd be glad to answer any questions the subcommittee may have.

Mr. MICA. Thank you for your testimony, Mr. Flynn. We're going to break from our regular order. Our ranking member has another commitment. But I'm going to yield to him for questions, at first, to you.

Mr. CUMMINGS. Mr. Chairman, I want to thank you for your courtesy and thank you for yielding. And, to our witnesses, unfortunately I've got another matter that I've got to get to. And to the witnesses on the first panel, I echo the sentiments of our chairman. We will find a solution. I promise.

Mr. Flynn, let me ask you something. You said something just a moment ago that, when you first started about finding a solution to the problem, and I think you said something about the near future?

Mr. FLYNN. Yes, sir.

Mr. CUMMINGS. One of our members on the other side talked a little bit earlier about how deadlines are met and deadlines are broken. And when those deadlines are broken every time they're broken it affects somebody's life. Here we don't even have a deadline. And I'm just wondering when can we expect resolution.

These people and people in like circumstances I can imagine when they heard "near future," they probably almost slid down in their chairs and said, "Not again."

And I don't think that either side—and this is bipartisan, by the way—either side wants to be part of a conspiracy where nothing happens. You follow what I'm saying?

Mr. FLYNN. Yes, sir.

Mr. CUMMINGS. And so when will we be effective, can you give us an idea of what we're talking about date-wise?

Mr. FLYNN. I believe I can.

Mr. CUMMINGS. And what is blocking us from getting there? How long have you been working on this problem?

Mr. FLYNN. We've been working on this problem about 18 months since the Senate appropriations committee report requested recommendations from us.

Mr. CUMMINGS. OK. Was a deadline set then?

Mr. FLYNN. We were expected to have completed that in January of this year, Mr. Cummings.

Mr. CUMMINGS. OK. So you see what I'm talking about.

Mr. FLYNN. Exactly.

Mr. CUMMINGS. It's now, we're about to go into August. And so, I guess what I want to know is, what has blocked you from getting to a solution and some kind of date by which we can expect a solution?

Mr. FLYNN. I know, Mr. Cummings, that you have to leave in a minute. I'll try to answer that very shortly. We fully expected to be able to issue a report in January 1997, earlier this year. There

were two court cases that had a direct bearing on this issue that were decided that did, in fact, alter and influence the way in which our recommendations were going.

We are close. I would expect that we can complete the consultations that we need to complete with the affected agencies—the Federal Retirement Thrift Investment Board, Social Security, and Treasury—and I’m hopeful, Mr. Cummings, that we can do that within the next 30 days.

Mr. CUMMINGS. Well, we come back here what? Early September?

Mr. MICA. The 3rd.

Mr. CUMMINGS. Yes. So you actually have 2 or 3 extra days. So I hope that you do that. You said something about—when you were talking about your objectives—and I think you were sort of talking about the parameters of your trying to find a solution.

Mr. FLYNN. Yes, sir.

Mr. CUMMINGS. You said the words, something to the effect that you’re trying to get these Federal employees who had been victimized—those are my words—these were yours—what funds that they reasonably expected to receive. Is that a difficult thing to calculate for you? You follow what I’m saying?

Mr. FLYNN. It is not a difficult thing to calculate with respect to a current employee who is currently working for the Federal Government. It becomes more difficult, Mr. Cummings, when we look at all the different types of employees that we have here and their current status in life.

Mr. CUMMINGS. Mm-hmm.

Mr. FLYNN. If I could, just very quickly, as you’ve heard, we do know of a number of employees where errors have been identified and where subsequently the employees have been placed in the correct system. Those are the individuals that we know about.

We also know that there are individuals who are in the incorrect retirement system now and their agencies or they have not yet identified that. Those are current employees. We have separated employees, some of whom have left their contributions, who are waiting for either a return to Federal employment after a period of private employment, or who may be, in fact, waiting to elect a deferred annuity at age 62.

In addition to that we have some retirees who are also affected by this. And in addition to that we have survivors of retirees who are affected. Providing those other types of individuals with choices, one of which might give them a benefit that they would have reasonably expected to receive is a somewhat more difficult matter, but we can get there. And we will.

Mr. CUMMINGS. Do you think that this is something that requires congressional action or can this be administratively addressed? Or do we have to have a combination of both?

Mr. FLYNN. Mr. Cummings, the solution that we are talking about the parameters of here would require legislative action and probably some administrative action as well. I do know that we have used in our view, and in the views of agencies, as much of the administrative flexibility that is available within the current system.

So this is primarily going to be a legislative proposal that will then entail some administrative action after that.

Mr. CUMMINGS. There have been some estimates by, I think Mr. White, about how many people are affected by this. Can you—were those figures accurate? Did you hear his testimony?

Mr. FLYNN. Yes, I did, Mr. Cummings.

Mr. CUMMINGS. OK.

Mr. FLYNN. I can tell you that there is no single source of information on how many error situations have occurred. That is because there is simply no mechanism to track that. We do have anecdotal information from departments and agencies with whom we've worked on correcting these errors over the years that suggest different numbers for different departments and agencies.

In the aggregate, let me try it this way. I can tell you on the basis of everything that I have seen that the overwhelming number of participants in the retirement systems we administer are in the correct system. As a proportion of the total number of participants, this is a small proportion of people even if it were, as Mr. White has indicated, several thousands of people.

Having said that, however, let me also quickly emphasize that we understand and appreciate for individuals, whether it's one or whether it's a thousand times one, this is a personal, vexing, traumatic issue. And it's something that we must find a solution for, not only for the individuals that we know about, but for the individuals we may discover in the future.

Mr. CUMMINGS. Well, I'm glad you said the second part of that, because I was going to tell you that one, one is too many.

Mr. FLYNN. Yes.

Mr. CUMMINGS. Let me ask you just a last question. I wish I had more time, but I've got to go. But let me ask you this. Are these errors still going on? In other words, are we still running into problems?

Mr. FLYNN. Mr. Cummings, you will hear, I'm sure, from the testimony that the majority of these errors occurred during that transition period from 1984 to 1987.

Mr. CUMMINGS. Right.

Mr. FLYNN. It is true, nonetheless, that errors can yet still prospectively occur.

Mr. CUMMINGS. Mm-hmm.

Mr. FLYNN. And that's why, again, part of the parameters of the solution we want to devise here is something that can be applied 5 years, 10 years from now, whenever these types of situations present themselves. Hopefully they will be very small in number, if not nonexistent altogether, but I cannot say that to you with certainty.

Mr. CUMMINGS. One of the earlier witnesses called for a review of all hires during the mid-1980's in order to find all the remaining enrollment errors. How do you feel about that?

Mr. FLYNN. I think that you will hear both from the agencies and from me that that is a very significant administrative burden to apply what still to this day, Mr. Cummings, remains a relatively complex set of rules. If we can create this solution that enables employees to be equitably treated with respect to their income, security and retirement prospectively, then such a comprehensive fold-

er-by-folder review wouldn't be immediately necessary because we could create mechanisms that dealt with this as they presented themselves in the future.

Mr. CUMMINGS. Let me ask you this—and I wish I could ask it of all the witnesses—but I want to ask you. It's a very simple question. Could you feel their pain as I did this morning?

Mr. FLYNN. Yes, sir, Mr. Cummings, I could.

Mr. CUMMINGS. Well, I ask all of you to do me a favor, that as you move toward this 30-day deadline, and as you sit there in the room and try to resolve that, I hope that you will think about the pain that you felt coming from them today, because I certainly felt it.

And I hope that you'll think about that pain and multiply it by the fact that each one of these witnesses, there are whole lot of other people affected, too, but they also have families that are affected.

And sometimes I think it's good for us in government—and that includes us in the Congress—to reverse roles and put ourselves in the places of people who are, in this instance, harmed by what we or the government has done in the past. Thank you very much.

And, Mr. Chairman, thank you very much for the courtesy, again. I appreciate it.

Mr. MICA. Thank you, Mr. Cummings. And thank you also for your suggestion of setting a deadline. And we're going to meet in my office on Wednesday, September 10, at 11:30, to hear from Mr. King or his designee, Mr. Flynn, their solution.

So we give them not only 30 days, but a couple to spare. Eleven-thirty in my office. And we'll have a solution from them. Of course, we will finalize the solution at that time. I'd like to recognize now the gentlelady from Maryland, Mrs. Morella.

Mrs. MORELLA. Thank you, Mr. Chairman. I look forward to being at that meeting post-Labor Day around September 10, knowing that OPM has been spending like 18 months, you say, working on the problem.

Now, from what I understand, you do not know all of the Federal employees who are affected, right, Mr. Flynn?

Mr. FLYNN. That is correct, Mrs. Morella.

Mrs. MORELLA. Because you're got different categories that you just mentioned. You've got your retirees, those who have been separated, those who are still actively working there who may not even know it. Would it not be for those people, a simple solution to let them just stay where they are and continue in the system that they happen to be in?

Mr. FLYNN. Mrs. Morella, let me try and answer that for you by mentioning two factors. First, it's important, I think, to remember that while an employee is in an active status working for a Federal agency the personnel operations that affect him or her are actually carried out on a day-to-day basis by personnel and payroll offices of the various departments and agencies worldwide.

So it would not be unusual for the Office of Personnel Management not to have a name-by-name listing of all the employees who have been affected by these errors. I know, and I know that you'll hear from the agencies this morning that as they have identified these errors, they have identified the individuals so that when we

arrive at a solution that everyone can agree to, we can then go to these individuals and work with them on that solution.

With respect to the second part of your question, and that is, wouldn't it just be easier to leave people where they are, I think as you heard from the group that testified earlier, people's individual personal financial circumstances differ from one to the other. And you heard amongst the four people this morning preferences to stay under the Federal Employees Retirement System if they were given perhaps some expanded opportunity to do make up contributions and to receive—

Mrs. MORELLA. That's because they knew that they were given not only the wrong advice but put into the wrong system.

Mr. FLYNN. You're absolutely correct.

Mrs. MORELLA. Had they not known that—I mean, think of the trauma that they went through and the anguish in trying to rearrange. But if they didn't know that, if they are receiving retirement, everything seems to be fine, why go back to those people and kind of ignite the explosive quality of combined mistakes?

Mr. FLYNN. You raise a very valid question, Mrs. Morella. And to the degree that we can build into this solution something that enables employees to make choices about what they perceive as being in their best interests, then you might very well have a situation where most people discovered prospectively would prefer to retain the coverage that they were originally incorrectly placed in, though it is also true that some people whose coverage errors have been corrected already might today see that as being in their interest.

I spent a number of years as a head teller with a bank before I came to work for Government. And I know from that experience how deeply personal information about one's finances and the implications of one's finances for the future are.

One of the things that we've learned in this process of studying the issue is that different people do in fact come to this issue with very different ideas about what would be an appropriate remedy for them. And we want to try and develop a solution that is responsive to that diversity of views.

Mrs. MORELLA. I guess I'm trying to understand what you're saying. I'm just simply saying that if they don't even know that they're in the wrong system and they're happy where they are, then why do anything more about it. Because it seems like you're planning to find out who they are. And are you planning to notify them?

When you listen to Mr. Schrum, just as an example of all those thousands of others, he, in 1987, was given the option of switching to FERS, but no one told him that he was ineligible to stay in CSRS. And then even after that initial error, there was another opportunity to be told that he was in the wrong system, but it took several years for that. See what I'm saying?

Mr. FLYNN. Absolutely, Mrs. Morella. That is a distressing rendition of how an individual was provided with minimal guidance and assistance during that period of time. I am obviously not personally aware of Mr. Schrum's situation, but if that, in fact, is the case, we made several errors and then compounded it. And that should not have occurred.

Mrs. MORELLA. Mm-hmm. Now, are there many who are affected who have not been notified? I mean, there are some affected you don't even know.

Mr. FLYNN. That is correct, Mrs. Morella.

Mrs. MORELLA. Right. Now, those that you do know, have they been notified?

Mr. FLYNN. The law does require that when an individual's misclassified retirement coverage is identified that the individual be notified and that under current law corrective action be taken to correct the retirement records to reflect the correct system and to reallocate the contributions from the Civil Service Retirement and Disability fund to the Social Security Administration, and so on and so forth.

Mrs. MORELLA. And nobody on the first panel indicated getting advice, counsel, direction, or assistance from OPM. And I didn't even get a response to my letter. What's happening?

Mr. FLYNN. Mrs. Morella, first with respect to your letter, I hope that we will be able, in our response to that letter, to lay out for you, as we have talked about here this morning, a way to address this, that represents agreement among all the respective agencies within the executive branch and that looks at this issue from a comprehensive standpoint. I apologize that you have not received a response to that letter as of yet.

Mrs. MORELLA. No, it was simply that when I asked the panelists about whether they had gotten assistance from OPM—

Mr. FLYNN. Yes. Right.

Mrs. MORELLA [continuing]. They all said they had gotten some comfort from somebody within their agency, but OPM did not give them help.

Mr. FLYNN. Thank you. I appreciate refreshing my memory on the main thrust of your question. As I mentioned earlier, we do rely heavily on departments and agencies to provide counsel and assistance to employees when they're in active status, because that's where they get most of the services.

So it was heartening for me to hear that from their local personnel and payroll offices, these individuals received what assistance was available. To the degree that we at OPM, in responding to inquiries, telephone calls, questions, from any of these individuals or any others who have been similarly affected, have given the impression that we didn't care, that we didn't want to provide any assistance, I apologize. That's certainly not our intent.

I think what we were trying to convey was that in the framework of existing law and regulation, these are the only activities that are possible and that we are studying this matter with an eye toward recommending a solution that would deal with this issue on a broader, more comprehensive, equitable basis.

That's really the message we should have been conveying. Now, we have worked very hard with departments and agencies across government providing them materials, training aids, information, training. We had at our benefits officers conference just this past June a session on this issue, so that they in turn can provide the direct face-to-face assistance to individual employees who are affected by this. We can always do that better. But that's the primary avenue of that support for current employees.

Mrs. MORELLA. We are here now to look at what remedies we can find for the future and I'm reminded that as we look back, Shakespeare once wrote, "Things without remedy should be without regard. What's done is done."

Now we move ahead to the future and look for your resolution when we meet on September 10. Thank you, Mr. Flynn. Thank you, Mr. Chairman.

Mr. FLYNN. Thank you.

Mr. MICA. Mr. Flynn, just a couple of quick questions, comment. First of all—and I hope you take this back to Director King—I do expect that when a member of this panel or I write to you that we get some response, even an interim response. When did you write, Mrs. Morella, May?

Mrs. MORELLA. May 20.

Mr. MICA. May 20. That's not satisfactory. I mean, even—the last thing I did yesterday to my staff was, I said, I want a report tomorrow on every piece of correspondence from constituents that's over a week old. And my staff gives me an accounting. I report to my constituents. We're only here as temporary representatives of the people. And you, in this function, report to us.

So I do expect that courtesy. We've had a good working relationship. And even if it's, "We're working on it," the members of the subcommittee do deserve a response.

Is there any dollar price tag? Now, you said this may be in the thousands of people. Is there any price tag to potential financial obligation that we may incur to correct this? Can you give us any guesstimate at this point?

Mr. FLYNN. That's a very difficult thing to do, Mr. Chairman. And I can tell you quite honestly that there is no single estimate of what it might cost to correct these situations.

Mr. MICA. If we have several thousand, though, we're probably talking of tens of millions, hundreds of millions?

Mr. FLYNN. I would be hesitant, Mr. Chairman, right now to put a number on that. Once we have nailed down the specifics of the proposal that we will bring to you, we will nail down at the same time an estimated impact of the costs associated with that.

Mr. MICA. You're probably talking a pretty significant amount of money.

Mr. FLYNN. Well, that's a possibility, Mr. Chairman. We will provide you with estimates as best we're able to when we do that.

Mr. MICA. And we may be looking at some either opportunities to open up Thrift Savings to folks or repayment of Social Security or access to systems. But there are definitely going to be some substantial costs to bring these various individual situations to a corrected status. Is that correct?

Mr. FLYNN. We are certainly looking, Mr. Chairman, at all of those options. Whether or not they involve substantial costs or not for the individuals who have testified and for the others who have been similarly affected is a matter that I would like to spend time analyzing before I answer that one way or the other.

Mr. MICA. Why did OPM oppose the legislation last year?

Mr. FLYNN. The legislation that was proposed at the time, Mr. Chairman, and if you would give me an opportunity, I might, when I get back to the office, perhaps provide a full response for the

record. But the legislation that was proposed at the time, in our view, only dealt with a portion of this problem.

And as I said earlier today, we have many different types of people facing many different types of situations. And we think that rather than attempt to deal with this piecemeal, and perhaps in the process create inequities between different groups of people, it was important to come at this from a comprehensive standpoint that attempts to meet the objectives that I've outlined earlier this morning.

Mr. MICA. We will meet on the 10th to resolve this matter. Mr. Ford, you're recognized.

Mr. FORD. Thank you, Mr. Chairman. I'll be very brief. And I thank all the panelists and want to apologize to the former panel. I'm from the State of Tennessee, and Secretary Shalala and Glickman and Bruce Reid from the White House were here to talk about the tobacco agreement, so forgive me for having to leave in the middle of your testimony.

I sympathize and certainly support all that you said. And I'm pleased to hear the chairman and certainly the ranking member, and certainly pleased to hear the panelists talk in terms of a September 10 date to hopefully bring some resolution that speaks to fundamental fairness and equity issues.

I join with all of my colleagues in wanting to see this resolved. But I would just ask one question. I know that, Mr. Flynn, you've been discussing, I guess, this problem with the Social Security Administration, the Thrift Investment Board, for some 18 months now.

Any sense of what they've offered in terms of helping to bring some resolution to this problem and help make some these affected employees whole?

Mr. FLYNN. Well, Mr. Ford, we've talked about a number of things both within the Office of Personnel Management and with the Office of Management and Budget and other agencies that do have various aspects of this program to administer. I think that we are all in agreement on the broad overall goals.

I think what we're doing now is coming to some conclusions about what specific mechanisms that may be administered by the various agencies may need some analysis or review in terms of the mechanisms used to meet those goals.

It would be premature for me to say specifically what they are. But it does involve, for example, addressing the issue where it's possible to do so, of allowing employees perhaps to find a way to maximize the investment in their personal savings that they were unable to do so during the period of the error, things like that, so that when we present employees with choices, or former employees or retirees, they have the opportunity of knowing if they take action a, b, and c, this will be the result, if they take action d, e, and f, this will be the result.

And we want to nail those down and then bring those together in the form of a specific proposal very shortly.

Mr. FORD. Thank you, Mr. Chairman.

Mr. MICA. Thank you, Mr. Ford. Now, we've heard from OPM. Now we'll hear from the agencies. And the first panelist from the agencies—we have Internal Revenue Service—Sarah Hall Ingram,

Associate Chief Counsel of Employees Benefits/Exemption Organizations. Welcome, and you're recognized.

Ms. INGRAM. Thank you, Mr. Chairman and members of the subcommittee. My name is Sarah Hall Ingram. I'm the Associate Chief Counsel for Employee Benefits and Exempt Organizations at the Internal Revenue Service. I appreciate the opportunity to be here today to discuss some of the tax issues that face Federal employees who have been enrolled in the incorrect portion of the Federal retirement system.

I've submitted a written statement for the record. And all I wish to do this morning is just highlight a few things.

Mr. MICA. Without objection, that will be part of the record.

Ms. INGRAM. Thank you, Mr. Chairman. As is apparent from the previous testimony, the question of whether and how these erroneous enrollment mistakes should be corrected raises a number of important legal and policy considerations, many of which do not depend on the tax law. But I would like to focus this morning on two of the Federal tax issues that are raised by the situation. And this is with the IRS wearing the hat as tax administrator.

Since we do not have the specific proposal that is being worked on before us today, my testimony will necessarily relate to the discussion of generally applicable principles of tax law that would be at play in this situation.

The first issue relates to the FICA taxes. The Internal Revenue Service administers and collects the FICA taxes, which, as you know, are in two pieces, both the Medicare portion which applies to most Federal employees, and also the OASDI portion, commonly known as Social Security taxes, which are different for people in different programs.

Under the Internal Revenue Code sections 3101 and 3111, the responsibility for the liability for Social Security taxes are split between the employer and the employee. And there is a mechanism under 3102 for the employer to withhold from the employee's wages the employee's portion of the liability and then remit to the Service both the employee's portion and the employer's portion.

And under the normal procedures, the employer is required to deposit these taxes with the IRS shortly after the salary is paid. And there are deposit timing rules, as you know. These deposits do not identify the individual employees for whose account the payments are made.

To report the taxes there is a two-part system. The employer is required to file with the IRS a quarterly return, which is the return 941. And then after the close of the year the employer provides forms W-2 both to the Social Security Administration and to each employee. And that is taxpayer-specific data.

The Federal Government, including the IRS as an employer, is generally subject to these same requirements for reporting wages and doing the information reporting. Now, if the employer discovers an error on the 941 that has been filed with the IRS, it is generally required to provide corrected information with its next quarterly filing of the form 941 and to include a 941C, which flags the fact that a correction is being made and needs to be made.

Likewise, if an employer discovers an error on the W-2s that have been issued to the employee or the Social Security Adminis-

tration there is a procedure for the employer to issue corrected W-2Cs to both parties so they have the correct information for all purposes.

While these correction procedures are reasonably workable in situations in which the error is discovered relatively promptly and employers and the Government are used to dealing both with the original forms and the corrected forms, they were not really designed to deal with a situation in which an error persists over an extended period of time. And so that is certainly one of the issues in play in any solution.

We understand as an agency that receives instructions from OPM that, obviously, we need to issue correct W-2 information and if there are errors, issue corrected W-2 information, in part so that employees can be assured that the correct benefits calculations are performed by the Social Security Administration at the end of the day when they are in a benefit receipt mode.

The Internal Revenue Service is currently working with the Department of Treasury and other Federal agencies and obviously also with OPM to analyze the more complex issues that can arise with the possible need to correct FICA tax liability reporting when there are problems over an extended period of time.

Another aspect of the general situation you've been hearing about this morning relates to the limitations on employee contributions to the Thrift Savings Plan. As noted in my written testimony and as mentioned this morning by others, an employee who has been incorrectly assigned to the CSRS program would not have been allowed at that point to take advantage of the higher Thrift Savings Plan contribution limitations that were available to employees under the FERS program.

In general, the Internal Revenue Code limits the amount that an employee may contribute to a tax-deferred savings plan. That applies to private sector plans as well as to the Thrift Savings Plan. The subcommittee asked the IRS whether we had a position on proposals to waive those limits for situations in which Federal employees have been misclassified because of an agency mistake.

The Internal Revenue Code does not include any specific authorization that permits us to do an administrative waiver of those limitations that are established in the Code and, as I mentioned, apply to both the private sector as well as the Thrift Savings Plan.

And we would recommend that any legislative proposal to provide such authority should be considered as part of an integrated package that would address the entire solution so that the appropriate legislative changes, if any, to the Code, can be made as part of a whole.

Mr. Chairman, that concludes my prepared testimony, but I'd be pleased to respond to any questions you or the panel may have.

[The prepared statement of Ms. Ingram follows:]

**STATEMENT OF  
SARAH HALL INGRAM  
INTERNAL REVENUE SERVICE**

**BEFORE THE  
SUBCOMMITTEE ON CIVIL SERVICE  
HOUSE COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT**

**July 31, 1997**

Mr. Chairman and members of the Subcommittee, my name is Sarah Hall Ingram and I am the Associate Chief Counsel, Employee Benefits and Exempt Organizations, for the Internal Revenue Service. I appreciate the opportunity to be here today to discuss some of the tax issues facing federal employees who have been enrolled in the incorrect program of the federal retirement system.

As the testimony presented by the Office of Personnel Management (OPM) explains, a federal employee may be subject to one of four federal retirement programs: CSRS; CSRS Offset; FERS; and Social Security. While the basic provisions of these four programs are reasonably well known, the detailed and complex rules that were enacted in 1983, 1984 and 1986 to provide for the transition and integration of these systems have resulted in a number of employees being assigned to the incorrect program (*i.e.*, a program for which they are not in fact eligible).

These mistakes may affect the amount of an employee's retirement benefits; the amount of retirement plan contributions made, or FICA taxes paid, by a federal agency in respect of the employee; and the amount of retirement plan contributions

made (either directly or through withholding), or FICA taxes paid, by the employee.<sup>1</sup> Consider, for example, an employee who should have been assigned to the FERS program but was incorrectly assigned to the CSRS program. Such an employee:

- Would have had 7% of pay withheld and remitted to CSRS, and would have been credited with corresponding years of service for purposes of computing entitlement to a CSRS annuity.
- Would not have had the OASDI portion of FICA taxes paid to the Social Security Administration, either from salary withholdings or from agency funds, and would not have been credited with having worked for this period for purposes of computing entitlement to social security benefits.
- Would have had a limited ability to contribute to the Thrift Savings Plan (TSP), instead of being allowed the higher limits and matching features of the FERS program.

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<sup>1</sup> The Federal Insurance Contributions Act (FICA) imposes two payroll taxes on certain employees: the Old-Age Survivors and Disability Insurance (OASDI) tax (commonly referred to as the "social security tax") and the Hospital Insurance (HI) tax (commonly referred to as the "Medicare" tax). Almost all federal employees must pay the Medicare tax. In general, CSRS employees do not pay the OASDI tax, but FERS employees do.

The question of whether and how these mistakes should be corrected raises a number of important legal and policy considerations that do not depend primarily on the tax law. We understand that OPM is preparing a report to the Congress that will address these considerations comprehensively. My testimony will focus solely on certain federal tax aspects of this issue. Moreover, since there is no specific proposal as to how these mistakes are to be addressed, my testimony will necessarily be limited to a discussion of generally applicable principles of tax law.

The Internal Revenue Service administers and collects the FICA taxes. Under the Internal Revenue Code sections 3101 and 3111, the employer and employee are each assigned liability for one-half of the total tax due. However, in general, under section 3102, the employer is responsible for withholding the employee's share of the tax from the employee's wages, and then paying over both the employee's share and the employer's share, to the Internal Revenue Service. The employer is required to deposit these taxes with the IRS shortly after the salary is paid; these deposits do not identify the individual employees on whose account the payments are being made.<sup>2</sup> To report the taxes associated with the wages paid to each employee, the employer must file with the IRS a quarterly return on Form 941, Employer's Quarterly Federal Tax Return. After the close of the calendar year, the employer provides Forms W-2 to each employee and to the Social Security Administration. The federal government

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<sup>2</sup> Depending on the amount of tax liability, the employer may be required to deposit the tax as soon as the next business day after the salary is paid, or within a few days or a month thereafter. Treas. Reg. Section 31.6302.

is generally subject to these same rules in reporting wages paid to federal employees.

If an employer discovers an error in a Form 941 that has been filed with the IRS, it is generally required to provide corrected information with its next quarterly filing of Form 941 and to include a Form 941C as part of that filing. Likewise, if an employer discovers an error in the W-2 information provided to the employee or the Social Security Administration, the employer is generally supposed to issue corrected Forms W-2C to both parties. While these correction procedures are reasonably workable in situations where the error is discovered relatively promptly, they were not designed to deal with a situation in which an error persists over an extended period of time.

We understand that OPM instructions to federal agencies generally require the issuance of correct W-2 information to ensure correct benefit calculations by the Social Security Administration. The Internal Revenue Service is currently working with the Department of Treasury and other federal agencies to analyze the complex issues presented by the possible need to correct FICA tax reporting over an extended period of time.

Another aspect of this general problem relates to the limits on employee contributions to the Thrift Savings Plan. As noted above, an employee who has been incorrectly assigned to the CSRS program would not have been allowed to take advantage of the higher TSP contribution limitations under the FERS program. In general, the Internal Revenue Code limits the amount that an employee may

contribute to a tax-deferred savings plan such as the TSP. The Subcommittee has asked whether the IRS has a position on proposals to waive these limits for federal employees who were misclassified because of an agency mistake.

The Internal Revenue Code does not include any specific authorization for an administrative waiver of the limitations it establishes. Any legislative proposal to provide such authority should be considered as part of an integrated solution to the entire range of issues presented by this problem.

Mr. Chairman, this concludes my prepared testimony. I would be pleased to respond to any questions you may have.

Mr. MICA. Thank you for your testimony. And now I'd like to recognize Dr. Diane Disney, Deputy Assistant Secretary, Civilian Personnel, at the Department of Defense. Welcome back. And you're recognized.

Ms. DISNEY. Thank you, Mr. Chairman and members of the subcommittee. I'm pleased to be here today to describe the experiences of the Department of Defense in managing the issues related to employees who have been enrolled in the wrong Federal retirement system. I've submitted a written statement for the record and would like just to highlight some of that testimony.

Mr. MICA. Without objection, that complete statement will be made part of the record.

Ms. DISNEY. Thank you. Let me begin by noting that DOD truly cares about its current and past employees and is committed to finding and correcting errors that cause hardship.

As previous speakers have indicated, retirement system determinations are very complex. Between January 1984 and January 1987, DOD placed approximately 170,000 new hires into the transitional system. Our recent search of the data records of the interim category hires has revealed about 3,100 records of employees who were hired after December 31, 1983, but placed in the Civil Service Retirement System.

Most of these records were coded correctly because of prior Federal service. At the beginning of this fiscal year, however, the department had about 500 cases at the Defense Accounting and Finance Service for corrective action.

These retirement system errors come to light in a variety of ways. Most commonly, they are discovered during an audit of the personnel folder. An audit is routinely done when employees transfer or return from overseas. Personnel files are also audited when former employees are rehired.

Errors may be discovered when employees seek retirement credit for previous service or after they receive pre-retirement counseling. We've also found that erroneous coding is uncovered by specialists after they receive the classroom training that we provide.

Nearly all of the erroneous enrollments at DOD date back to those years between 1984 and 1987. Thus we're faced with a task of correcting actions that are 10 or more years old. Now although the correction of the actual error is fairly straightforward, the subsequent correction of all the supporting records is complex and involves several other agencies, including OPM, the Internal Revenue Service, the Social Security Administration, and the Thrift Investment Board.

While we would like to make each employee whole for retirement coverage, doing so is often impossible under existing laws. The department has developed and is using a variety of tools to advise personnel offices of this issue and to get the word out to employees themselves.

The benefits and entitlements branch of our Field Advisory Service, for example, has done an outstanding job in this area. It publishes articles addressing corrections of errors, coverage rules, and changes to those rules. The articles also serve to inform employees.

We've developed and published a retirement plan decision logic tree. And while it sounds very boring and it looks complex, this has

received very good reviews from the personnel community and OPM. And we've now put it on the World Wide Web so employees can use it themselves, as well, if they're concerned at what their circumstances might be.

We've published an easy-to-use, easy-to-understand reference guide designed to walk personnel specialists through the entire process. This guide also contains sample letters that can be sent.

In addition, we offer training classes to all DOD personnel specialists without charge. And our benefits and entitlements staff are available by phone, fax or e-mail 12 hours a day Monday through Friday.

As you know, we are regionalizing much of our civilian personnel management operation. As the personnel folders are moved into the new regional centers, we have another opportunity for review. Then, too, our Defense Finance and Accounting Service has developed and is staffing a series of memoranda to its center directors, providing information on how to adjust civilian pay records.

Of course, we also rely upon OPM guidance on corrective procedures and on litigation affecting benefits. OPM has already testified to its actions in this area. The solution to this problem is not easy.

We can use our data base to identify employees who may have been encoded erroneously. We've done that. The next step is to continue screening individual records to discover who might have been enrolled erroneously. Our installation personnel officers are doing that. Those are the relatively easy parts.

The hard part comes after corrections have been made. In order to make or keep employees whole, tax, Social Security, and Thrift Savings issues must be addressed. But they are beyond the control of DOD. We would welcome the opportunity to work on developing alternatives that are simple to understand, are simple to apply, and cause no financial hardship for employees or retirees.

That concludes my prepared remarks. I thank you again for this opportunity to describe our experiences and would be pleased to answer any questions you might have.

[The prepared statement of Ms. Disney follows:]

Statement of Dr. Diane M. Disney  
Deputy Assistant Secretary  
Civilian Personnel Policy  
Department of Defense  
Before the  
House Committee on Government Reform and Oversight  
Subcommittee on the Civil Service

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Erroneous Enrollments in the Federal Retirement Systems  
July 31, 1997

Mr. Chairman and members of the subcommittee. I am pleased to be here today to describe the experiences of the Department of Defense in managing the resolution of issues related to its employees who have been enrolled in the wrong Federal retirement system.

Changes in law and procedures have added a great deal of complexity to the retirement systems over the past thirteen years. Prior to 1984, the Civil Service Retirement System (CSRS) was the system for most Federal employees. The type of appointment determined whether an employee was covered under the CSRS. Generally speaking, employees hired with a career or career-conditional appointment were covered, other employees were covered under Social Security.

All of that changed with the Social Security Amendments of 1983, Public Law 98-21. This law provided that Federal employees hired after December 31, 1983, and certain former employees, were to be covered under Social Security and scheduled to begin making contributions. Public Law 98-168, passed shortly thereafter, required newly hired employees to make reduced contributions to the CSRS. This was an interim procedure pending the establishment of a new retirement system. That system, the Federal Employees Retirement System (FERS), became effective on January 1, 1987. With the establishment of FERS, personnel offices were given the responsibility to determine the proper retirement system for employees who were hired during the interim period and for all re-hires.

**Number of erroneous enrollments**

Retirement system determinations are complex and require personal review. The years between 1984 and 1987 were filled with much uncertainty as the old retirement system was phased out and the new system introduced. Unfortunately, despite our best efforts, some of the Department's employees who were hired or re-hired during that period were placed in the wrong system.

DoD placed approximately 170,000 new hires into the transitional system between January 1984 and January 1987. In 1987 OPM directed the agencies to review the records of all of these "interim" category employees to determine if the individual qualified to remain under

CSRS Offset. Those who did not, were to be transferred to FERS. Misapplication of complex coverage determination rules caused the majority of determination errors to occur.

A search of the data files of the "interim" category hires turned up 3,139 records of employees who were hired after December 31, 1983, and placed in the Civil Service Retirement System. Most of these employees were coded correctly because of prior Federal service, but each record must be screened to be certain. At the beginning of this fiscal year, the Department had 479 cases at the Defense Accounting and Finance Service for corrective action processing.

Retirement system errors come to light in a variety of ways. Most commonly they are discovered during an audit of the personnel folder. An audit is routinely done when employees transfer or return from overseas. Personnel files are audited when former employees are re-hired. Other times, errors are discovered when employees seek retirement credit for previous service or after receiving pre-retirement counseling. We have also found that erroneous coding is uncovered by personnel specialists after they have received classroom training given by the Field Advisory Service, a part of the Defense Civilian Personnel Management Service.

Most of the erroneous enrollments date back to the period between 1984 and 1987. Thus, agencies are faced with the task of correcting actions that are ten or more years old. Although the correction of the actual error is fairly straightforward, the subsequent correction of all the supporting detail records is complex and involves many other agencies, such as the Office of Personnel Management, the Internal Revenue Service, the Social Security Administration, and the Thrift Investment Board. While we would like to make each employee whole for retirement coverage, doing so is often impossible under the existing laws.

#### **Actions Taken by DoD To Inform Employees**

The Department uses many tools to advise personnel offices of this issue and to get the word out to employees.

- The Benefits and Entitlements Branch of our Field Advisory Service has done an outstanding job in making sure personnel specialists throughout the Department have the knowledge needed to make retirement system determinations:
  - The Branch publishes articles addressing correction of errors, coverage rules, and changes to those rules. The articles also serve to inform employees.
  - The staff developed and published a retirement plan decision logic tree that has received good reviews from the personnel community and the Office of Personnel Management.
  - It has published an easy-to-understand reference guide designed to walk personnel specialists through the entire process. The reference guide also contains sample letters to be sent to the employees.
  - Training classes are offered to all DoD personnel specialists without charge, and Benefits and Entitlement staff are available by phone, FAX, or e-mail 12 hours a day, Monday through Friday.

- The Defense Finance and Accounting Service has developed and is staffing a series of memoranda to their Center Directors providing information on adjusting civilian pay records as a result of retirement system corrections.

**Office of Personnel Management Guidance**

The Office of Personnel Management has issued guidance on corrective procedures and litigation affecting benefits. The OPM staff has developed and published guidance in its operating manual, The CSRS and FERS Handbook for Personnel and Payroll Offices.

**Conclusion**

The solution to this problem is not easy. We can use our database to identify employees who may have been enrolled erroneously, which we have done. The next step is to continue screening individual records to discover who has been enrolled erroneously. Our installation personnel offices are doing that. Those are the relatively easy parts. The hard part comes after the corrections have been made. In order to make the employees whole, tax, social security, and thrift savings issues must be addressed, but they are beyond the control of DoD.

This concludes my remarks. Thank you again for this opportunity to present our experiences in managing the issues related to employees who have been enrolled in the wrong Federal retirement systems. I will be pleased to answer any questions you may have.

Mr. MICA. Thank you for your testimony. I will now recognize Linda Oakey-Hemphill, agency retirement counselor with the Department of the Treasury. Welcome, and you're recognized.

Ms. OAKEY-HEMPHILL. Mr. Chairman and members of the subcommittee, I've previously submitted written testimony. And with your permission, I will just provide a brief summary of that testimony.

Mr. MICA. Without objection, that will be made part of the record. You're recognized.

Ms. OAKEY-HEMPHILL. Thank you. I'm pleased to appear today to discuss with you a matter of interest and serious concern: erroneous enrollment in the Federal retirement systems.

The Department of the Treasury's Office of Personnel Policy, in which I work, is responsible for providing technical and policy guidance in the various personnel specialties and liaison with other agencies for the Department's 13 bureaus.

As the Department's chief personnel expert in the area of retirement I have participated in initiatives directed toward preventing coverage errors or minimizing the negative effects entailed in the correction of such errors. Many of these initiatives which are noted in my written testimony have been inter-agency efforts.

In order to determine correct retirement coverage a set of complex laws must be applied to an individual employee's unique employment history. Employees cannot be expected to be familiar enough with the coverage rules to discover an error and, therefore, are generally unaware when one has occurred.

Additionally, there is no completely reliable way to use the automated personnel payroll system to identify errors. Consequently, many coverage errors have gone undetected for years. It is also not uncommon for an employee to transfer from agency to agency without detection of a coverage error. Usually, the longer an error goes uncorrected, the more severe the effects on the employee's financial planning and the greater the staff resources required to make the correction.

Despite the good will and substantial cooperative efforts of key agencies involved, which are reflected in my written testimony, we have found the available administrative remedies to be insufficient for preventing coverage errors or for making all affected employees whole with respect to their retirement planning.

I'd be happy to answer question you may have concerning my experiences in this area.

[The prepared statement of Ms. Oakey-Hemphill follows:]

EMBARGOED UNTIL 9 A.M. EDT  
Text as Prepared for Delivery  
July 31, 1997

TREASURY AGENCY RETIREMENT COUNSELOR  
LINDA OAKLEY-HEMPHILL  
HOUSE GOVERNMENT REFORM AND OVERSIGHT  
SUBCOMMITTEE ON CIVIL SERVICE

I am pleased to appear today to discuss the subject of erroneous enrollment in the federal retirement systems. Erroneous retirement coverages have been an on-going concern during the past 13 years, since the Social Security Act was amended to provide coverage for federal employees. During this time, Treasury staff has attempted to act both responsibly as a federal executive agency and with compassion for the affected employees. In light of Treasury's tax collection and financial management roles, our interest in resolving retirement coverage issues has been especially pressing. The departmental office of personnel policy, in which I work, is responsible for providing technical and policy guidance in the various personnel specialties, and liaison with other agencies (such as the Office of Personnel Management) for the Department's 13 bureaus. Our primary internal contacts are with the bureaus' headquarters human resources staffs. Retirement coverage depends on each employee's unique service history and can be affected by numerous factors. Presently, there is no reliable method to identify coverage errors. Often neither the employee nor the agency is aware of the error until the employee retires, a pay change occurs, or some other triggering event happens. Because of this it can be years before an error is detected.

Given the variety of errors in coverage that we have encountered; our field structure; staff changes; and changes in personnel payroll systems, we have been unable to determine, with certainty, the total numbers of errors that may have been identified and corrected in Treasury since 1984. However, for the calendar years beginning in 1994 through the present Treasury corrected an estimated 600 errors. This number does not include those errors which continued for less than one year, or those for which a deemed

RR-1854

Federal Employees Retirement System (FERS) election was made.

#### Preventing coverage errors

While we do not have specific data on the total number of errors we have corrected, we have recognized incorrect coverage as a significant problem. Consequently, on an on-going basis, we have worked cooperatively with other agencies and the IRS in an effort to prevent coverage errors from occurring and to reduce the negative impact that correction of these errors can have on employees. We have found that, despite the substantial effort and high degree of good will and cooperation among the key agencies, the available administrative remedies for preventing and correcting these errors are not sufficient to stop them from occurring, or to make all affected employees whole with respect to their retirement and other financial planning. Following are a sampling of activities that we have undertaken, many in conjunction with other agencies, to prevent errors.

- Prior to the implementation of the Social Security Act changes (Public Law 98-21), we arranged for social security staff to train bureau headquarters benefits staffs concerning coverage and benefits issues. This training was offered again by the Department in 1986, prior to FERS implementation. In 1983, OPM assisted the Department by providing a briefing for the Secretary and staff, including bureau heads, concerning the Social Security Act changes. This helped to ensure attention at the highest levels to the correct identification of affected employees within the Department.
- In 1984, amendments to the Social Security Act (Public Law 98-369) required retroactive social security coverage for certain employees hired or converted to permanent appointments on or after January 1, 1984. Our office developed detailed guidance to assist the bureaus in correctly identifying affected employees when implementing the law.
- In 1986, the Department, with support from OPM staff, prepared procedures for the bureaus' use in correctly identifying employees to be converted to FERS coverage effective January 1, 1987. Appropriate system logic was developed to assist the identification and automatic conversion to FERS. OPM shared this material with other agencies through an interagency meeting.
- In 1986, our office was instrumental in bringing together other Cabinet agencies in a series of regular meetings to analyze the FERS act, discuss implementation strategies, and, in general, attempt to ensure proper implementation of the law and its coverage provisions. These meetings continued into 1987. Technical experts from OPM and the Social Security Administration attended and provided support to the group.

- In 1987, prior to the FERS open season, Treasury prepared procedures for the bureaus to use in order to process elections correctly. These were reviewed for technical accuracy by OPM staff who later shared the material government-wide.
- In 1993, OPM reviewed and commented on a course that we developed to train bureau personnel staff in making correct retirement coverage determinations. The course, which has been revised several times, is still being used within Treasury. We have provided copies to other agencies.
- In 1996, we worked with the IRS taxpayer services division and the Department of Agriculture (Treasury's payroll system provider) to implement changes to the Social Security Act that affected employees transferred to international organizations. The materials prepared in this project were used by other cross-serviced agencies. Taxpayer services issued a bulletin to assist the transferred employees from all agencies in properly filing their tax returns.

#### Minimizing impact

Our efforts to minimize the negative impact of retirement coverage corrections have focused primarily on improving the quality of our counseling and records corrections requirements. When an error has occurred, we believe it is the agency's responsibility to inform the employee fully about the options that may be available and to make the correction swiftly and accurately. We have also endeavored to keep abreast of emerging legal issues related to the correction of errors. The following are our activities in relationship to minimizing the negative impact of corrections:

- In 1990, when the law was amended to permit agencies to pay lost earnings to thrift savings plan accounts in cases of agency error, the Federal Retirement Thrift Investment Board responded to Treasury's request for assistance by developing and presenting training on correction of records to the bureaus' payroll and personnel representatives. The training presentation was accompanied by our written policy guidance. Subsequently, we have periodically scheduled special Treasury sessions of the board's on-going training classes. Coverage issues are often raised in these training sessions. Additionally, Treasury systems staff has subsequently developed a course to teach bureau personnel staffs about error correction and lost earnings processing.
- In 1994, we coordinated a meeting of representatives from OPM, Social Security, IRS, GAO, and Justice to discuss a strategy for the resolution of certain issues related to retirement coverage corrections involving erroneous exclusions from social security coverage.

- Also in 1994, we reviewed and commented on the detailed procedures that were developed by the IRS headquarters staff for field offices to use when processing corrections of retirement coverage. These procedures remain in use by IRS.
- In 1994, we prepared and distributed model correspondence for the bureaus' use in notifying employees of coverage errors and their options related to correction of their retirement coverage. We were assisted by the Federal Retirement Thrift Investment Board whose staff reviewed and commented on our drafts with respect to accuracy of the information concerning thrift savings plan account corrections.
- We recently were successful in making special arrangements with the payroll system for corrections involving employees who were erroneously excluded from social security tax coverage, pending the resolution of outstanding legal issues.
- We also have queried the payroll personnel system in an effort to identify likely retirement coverage errors and are preparing correspondence transmitting the resulting reports to the bureaus. We will request that the bureaus review individual employee records to verify coverages.

In addition to the above, many of the bureaus have undertaken reviews of their employees' records to identify and correct coverage errors.

We have attempted to be proactive in our approach to ensuring that Treasury employees are properly covered by retirement ; that corrections to coverage errors are handled promptly and performed appropriately; and that employees are informed about their benefits coverages and choices. I would be happy to answer any questions that you may have.

Mr. MICA. Thank you for your testimony. Dr. Disney, did I hear you correctly? Did you say in 1984, I guess, through this period you enrolled 170,000 folks?

Ms. DISNEY. Yes, sir. In the transitional program.

Mr. MICA. In the transitional program.

Ms. DISNEY. That was—the 1980's, as you know, was a period of considerable hiring in the department.

Mr. MICA. Right. And we heard that there—I had one report that in the Air Force they may have enrolled as many as 1,000 people a month in that wrong system. Is that an accurate estimate?

Ms. DISNEY. That I have no information on.

Mr. MICA. If they had a 5 percent error rate, and we did 170,000 folks, we're looking at 8,500 folks possibly improperly enrolled.

Ms. DISNEY. We have looked very carefully in our records and have found a maximum of 3,100 where we believe there could possibly be an error.

Mr. MICA. So you have 3,100 just in DOD?

Ms. DISNEY. No, sir. We don't have 3,100.

Mr. MICA. Possible.

Ms. DISNEY. That's the outside. And I have reason to believe that most of those were properly coded. We know we have 500 cases. We know that. So if the ratio holds, we would probably end up with 1,000. We're trying everything we can to identify everybody who was misclassified.

Mr. MICA. So, in DOD we have an estimate of about 1,000?

Ms. DISNEY. Yes, sir.

Mr. MICA. Ms. Oakey-Hemphill, how long have you been working on this inter-agency task force to resolve this problem?

Ms. OAKEY-HEMPHILL. I have been working with other agencies for literally years to try to either prevent errors or to minimize problems associated with them.

Mr. MICA. How long?

Ms. OAKEY-HEMPHILL. Well, basically, when I started this job back in 1983 we were preparing for the Social Security Act changes, the implementation in 1984.

Mr. MICA. But working with them trying to correct the wrong enrollment since when?

Ms. OAKEY-HEMPHILL. Well, I guess the bulk of my efforts have really been since maybe 1992 or 1993 just in terms of internally in Treasury. Much more activity because many more errors started to surface around that time.

Mr. MICA. How many errors do you think in Treasury?

Ms. OAKEY-HEMPHILL. There's almost no way of estimating.

Mr. MICA. How many have you uncovered so far?

Ms. OAKEY-HEMPHILL. Well, from the period 1994—calendar year 1994—through the present, there were approximately 600 errors corrected. And these are errors of all types. But that—that required intervention by our payroll system, that weren't just automatically processed through the payroll system.

So 600 errors that had gone on for more than a year during the last 3 to 4 years.

Mr. MICA. Ms. Hall Ingram, you said basically it's going to take a legislative solution to go back and correct some of the IRS problems. Is that correct?

Ms. INGRAM. I think that's probably accurate. In terms of which ones will be necessary to change legislatively, that will depend on which package looks to be the best fit for the variety of problems. Whether one would suggest changing the \$9,500 limitation, for example, would depend on whether that turned out to be a necessary part of the solution.

Mr. MICA. If a private sector hadn't properly set aside some of these funds for Social Security and some of the other accounts, they probably would have been noticed by IRS and probably would have been threatened by IRS and had their account seized, probably their property. Have you ever thought of maybe putting a lean on the Capitol building to resolve this matter?

Ms. INGRAM. I think that the issue of what happens in the private sector is an interesting one and is certainly part of what we're looking at.

Mr. MICA. You have a handle.

Ms. INGRAM. Pardon?

Mr. MICA. You have a handle. I've seen a couple of your threatening letters. But you don't have that same handle with the agencies or the Federal Government, I guess not.

Ms. INGRAM. For purposes of Social Security taxes we have generally the same requirements and the same procedures. And we do approach Federal and State government employers in much the same manner we would approach a private sector employer.

In the private sector one of the things that it's important to remember is that the retirement plan regime and the Social Security regimes are decoupled in the private sector for the most part.

Mr. MICA. Mm-hmm.

Ms. INGRAM. And so solutions to Social Security problems in the private sector are generally handled with one set of rules and procedures. And solutions for errors in covering employees or making employees whole who have been omitted from plans or programs is done under a separate regime.

It would appear to be somewhat more complicated in the Federal sector. And that's one of the things that has to be put together—all those different pieces.

Mr. MICA. Now I take it that you or someone from your agency has been working with OPM to come up with suggestions for a solution to your particular element and problems, is that correct?

Ms. INGRAM. Right. Both as a Federal—employer of employees who have such issues, we've obviously been working with Treasury in keeping people informed about what issues we're seeing and the people affected. Also as a regulator in the area of Social Security rules and also in pension plan or retirement plan rules, we've also been flagging issues and trying to provide analysis that could be used.

Mr. MICA. Have you submitted written recommendation to OPM to resolve some of the problems in your specific area? And if so, when?

Ms. INGRAM. The IRS, itself, has not submitted a specific legislative proposal. We've submitted analyses of some possible options through the Treasury Department. And I understand that those have been shared. The issue of legislative change obviously ultimately has to come out of the Office of Tax Policy for us.

And they are involved in those discussions both as to the Thrift Savings Plan rule about the cap on contributions. And, also, as to the Social Security, we have looked at whether there are administrative ways within our power to deal with both of those issues. And we have shared our concerns about our inability to deal with them and why. And we've shared those, yes.

Mr. MICA. But you're saying your determination is you cannot deal with it administratively to resolve some of these situations?

Ms. INGRAM. Our flexibility is severely limited.

Mr. MICA. Limited.

Ms. INGRAM. Yes.

Mr. MICA. Ms. Oakey-Hemphill, have you all prepared any written recommendations to OPM to resolve the matter from your perspective? I take it you work with them constantly?

Ms. OAKEY-HEMPHILL. Yes.

Mr. MICA. Or are you just working on trying to find individual solutions to individual problems?

Ms. OAKEY-HEMPHILL. Well, both, rather.

Mr. MICA. Have you submitted a written plan, a recommendation?

Ms. OAKEY-HEMPHILL. Not specific recommendations on how to fix the errors. There are so many different kinds of errors. And the solutions for different employees present themselves differently. I think Mr. Flynn suggested personal preferences largely figure into these. So no, we have not. Though from time to time we have discussed informally with staff just what kind of shape a fix would take.

Mr. MICA. Well, every time, Mr. Flynn, you resolve one of these or reach some accommodation, administrative solution, whatever, aren't you setting a precedent? Are you considering a freeze until some overall solution is developed or legislative solution?

Mr. FLYNN. I think, Mr. Chairman, if a freeze were available to us administratively, it would be something that we would want to consider. Our view of the situation is that the law is fairly specific. When an error is discovered, it must be corrected retroactively at the point in time that it's discovered. So I don't think that option has been available to us as we have worked on the development of a broader solution.

Mr. MICA. How many lawsuits are pending, or have there been? Are you aware, Mr. Flynn?

Mr. FLYNN. Mr. Chairman, I am aware of several, but I do not have a full accounting of lawsuits which may be pending in individual agencies.

Mr. MICA. Is there also a class action suit brought?

Mr. FLYNN. Not that I'm aware of, sir.

Mr. MICA. No? Not yet? I don't have any further questions at this time. Mrs. Morella.

Mrs. MORELLA. Thank you. DOD, Dr. Disney, appears to be more aware and responsive to this problem than other agencies. And yet you expect there are still at least 500 people out there who don't know. And, of course, this is troubling.

Ms. DISNEY. Those individuals know, but we have not been able to resolve their circumstances.

Mrs. MORELLA. But they do know?

Ms. DISNEY. Yes, ma'am.

Mrs. MORELLA. Mm-hmm. Which is also troubling. Right. Have other agencies followed your example of outreach in trying to identify errors? Do you work with the other agencies? Is there communication?

Ms. DISNEY. We try to work very hard with individual agencies in part through the inter-agency advisory group, which OPM sponsors, and where we meet biweekly. We also make the other agencies aware of all the material that we're putting out on the web that is, we think, useful for others. We have made deliberate efforts to share the reference guide that we have developed.

As to what is actually happening in individual agencies, I'm not in a position to say.

Mrs. MORELLA. Mm-hmm. It would be nice at those meetings if they responded also so that you had a discussion about what that they have done, that it is working, that you have some idea of who is following and they have some idea of what other agencies are doing, also.

Has, I guess to all of you, has OPM been helpful both technically and in offering guidance? I'll ask all of you.

Ms. INGRAM. OPM provides us with guidelines and regulations and procedures that we try to follow so that all the Federal agencies are following the same procedures. And in that manner we get a great deal of guidance out of OPM. We recognize, partly because we administer a piece of this puzzle ourselves, that there are some tough issues that have been under discussion and under analysis, issues that belong to a number of different agencies, whether it's IRS or SSA or whoever.

And we've been interacting with OPM to get our share of those issues identified and analyzed. So we welcome the opportunity to get this package put together and get a solution done that integrates those pieces since no one of us holds all the pieces of the puzzle.

Mrs. MORELLA. An addendum to the question too is, is there another—any information or advice you could offer where OPM could be more helpful?

Ms. INGRAM. I think the commitment that you've heard this morning and that we've heard previously to get the pieces put together, whether they're the tax questions or the benefits side of the questions or whatever, and get that resolved, is exactly what we need from an agency point of view. And we welcome this putting together of all these pieces into a proposal. So I think that is, from our perspective, the right direction.

Mrs. MORELLA. Dr. Disney, do you want to comment on OPM?

Ms. DISNEY. Yes. I'm very pleased that we have a definite time table on which to move forward because this is an extraordinarily complex issue that causes great anguish to individuals and their families. And having a target to shoot for, I think, helps focus all of our attention.

Mrs. MORELLA. Dr. Hemphill, would you like to comment on OPM's role, if any, and have they been helpful and what you might suggest?

Ms. OAKY-HEMPHILL. I've always found OPM staff to be extremely supportive. We've worked together on a lot of projects. And

I've never had to ask twice. They are very, very supportive. And we look forward to working cooperatively with OPM and the other agencies involved in the future.

We've expressed our eagerness to do so. And we're very glad that the level of interest in this problem that's been expressed here today is surfacing and there's going to be action.

Mrs. MORELLA. You've all given very nice answers. I understand. But we're talking about whether there really is that kind of help that you needed. I guess I understand where you're coming from.

Do any of you maintain records to ensure the consistency of settlements so that employees in similar situations would be treated equally? I guess I could start with Ms. Ingram.

Ms. INGRAM. I don't have in hand today. We're pulling the information together.

Mrs. MORELLA. Yes.

Ms. INGRAM. And I can provide it to the committee later—

Mrs. MORELLA. OK.

Ms. INGRAM [continuing]. Exactly how many historical corrections have been made or what—you used the term "settlements"—have been effected. So I really can't give you information about that. Certainly, our efforts both on the IRS side of the house in the personnel office and also on the legal side of the house of the IRS has been to try to have consistent treatment and integrated answers.

So, but if you wish to have the data, I would need to go back and get that and submit it to the committee.

Mrs. MORELLA. Mm-hmm. If you could do that it would be appreciated.

Ms. INGRAM. OK.

Mrs. MORELLA. Dr. Disney? Whether you've maintained any record.

Ms. DISNEY. We maintain personnel records and payroll records on all of our decisions and try very hard to ensure that there is consistency of treatment of all of the individuals.

There are two separate sides. The personnel side of the house and the payroll side of the house. And I cannot speak today for all of the payroll records. But I can certainly determine the answer to your question from that perspective and provide that later.

Mrs. MORELLA. All right. Splendid. That would be great. Ms. Hemphill.

Ms. OAKEY-HEMPHILL. By settlements, do you mean court settlements for people who have sued or do you mean just the corrections of the errors themselves?

Mrs. MORELLA. Actually both.

Ms. OAKEY-HEMPHILL. As far as court settlements are concerned I have no data at all to be able to offer you.

Mrs. MORELLA. Right.

Ms. OAKEY-HEMPHILL. And I'm not sure that I could provide a comprehensive or complete—

Mrs. MORELLA. OK.

Ms. OAKEY-HEMPHILL. I suspect that we have had very few, if any.

Mrs. MORELLA. Right.

Ms. OAKLEY-HEMPHILL. As far as the corrections of these errors are concerned, depending upon the type of the error, going back and correcting the error is pretty much a cut and dried thing. There are only so many things that you can do and so many choices that you can offer to the employees.

Administratively, our hands are tied. We can't get creative with them. If we do we're stepping outside our boundaries. So, in terms of having to keep records on how we've corrected things, I think we would pretty much know that if we had done something properly, how we had done it. Who we have corrected and identifying people whose records were corrected, that could pose some difficulties because of payroll system changes and a variety of other factors. A length of time, that sort of thing.

Mrs. MORELLA. It sort of sounds as though you need some legislation or you need something to give you more authority to be able to settle these claims, something coming from Congress through OPM. Is that correct?

Ms. INGRAM. Yes.

Ms. OAKLEY-HEMPHILL. Potentially, yes.

Mrs. MORELLA. I mean, your hands are tied to a great degree.

Ms. DISNEY. We have situations where we have identified that there was an erroneous placement. And we've identified the amount of money involved. We cannot apply all of that money to a correction. Therefore, that money must be held in escrow until some further court case or legislation comes about.

Mrs. MORELLA. OK. Great. Well, I think you've answered my questions. Thank you very much for appearing here today. And thank you, Mr. Chairman.

Mr. MICA. Mr. Ford, you're recognized.

Mr. FORD. Thank you, Mr. Chairman. Very briefly. I thank Mrs. Morella. She really sort of exhausted many of the questions. And I thank the panelists. And I look forward to September 10. I'm pleased that there is a bipartisan cooperation on the committee.

And I'm hoping that we'll be able to make whole and restore the benefits for not only the four panelists we had earlier but certainly the affected families and loved ones who have been harmed and impacted by what seems to be an egregious oversight.

So thank you, Mr. Chairman.

Mr. MICA. Thank you, Mr. Ford and thank you, Mrs. Morella. I'd like to thank our panelists for their participation today. We've heard a story of a real nightmare for some of our Federal employees affected by this problem. Our goal is to find a solution and try to expedite decisionmaking to resolve these issues.

I'm concerned about what I've learned about this period of the change in system and enrollment. I guess I learned yesterday, and I don't have all the details, that they may freeze the District enrollment or change that. I hope we don't see a similar disaster occur now with making changes in the District retirement plan.

Hopefully, we can learn by this mistake and we won't repeat it again. But we will meet on September 10th, and we will find a solution. And I look forward to working with each of our panelists and others.

The record will be left open for 2 weeks. There may be additional questions that we'll submit to this panel. If there's no further busi-

ness to come before the subcommittee, at this time the committee is adjourned. Thank you.

[Whereupon, at 11:45 a.m., the subcommittee was adjourned.]

[Additional information submitted for the hearing record follows:]



OFFICE OF THE DIRECTOR

UNITED STATES  
OFFICE OF PERSONNEL MANAGEMENT  
WASHINGTON, D.C. 20415

AUG 19 1997

Honorable John L. Mica  
Chairman, Civil Service Subcommittee  
Committee on Government Reform and  
Oversight  
U. S. House of Representatives  
Washington, D.C. 20515-6143

Dear Mr. Chairman:

Thank you for your letter following the Civil Service Subcommittee's recent hearing on retirement coverage errors. We look forward to meeting with you to discuss a proposal to correct the problems addressed in the hearing.

You noted that in the course of Mr. Flynn's testimony at the hearing, he outlined twelve potential retirement coverage errors that could result from misapplication of the four correct coverages an employee might have under existing law. You requested that we provide the Subcommittee with summaries of individual cases that fall under each of these categories of error.

OPM, as the central human resources agency of the Government, relies on employing agencies for virtually all the day-to-day administration of the retirement programs affecting active employees. OPM provides agencies (through the agency headquarters Retirement Counselors) with the instructions and guidance they need to keep abreast of retirement rules and to counsel employees about retirement benefits. For this reason, our knowledge of coverage error cases is derived mainly from inquiries received from employing agency staff who request our assistance. When we receive an inquiry, we assist the agency in applying the law and regulations to any individual case based on the facts presented. Although we know through experience that each type of error has occurred, we do not possess case files on the individuals themselves.

Nonetheless, we can provide a description of each of the types of errors, together with examples of how they occur. The general rules and the exceptions to those rules, as shown in these examples, demonstrate the difficulties that employing agencies have faced:

1. FERS classified as CSRS, that is, an employee who by law is subject to FERS, but whose agency has erroneously placed him or her in CSRS. One set of retirement coverage errors can be traced to Public Law 98-369, enacted July 18, 1984,

which changed Social Security coverage rules retroactive to January 1, 1984, the date of initial implementation of general Social Security coverage for Federal employees under Public Law 98-21. If an employee with Federal service before 1984 first entered a permanent Federal job after December 31, 1983, the law originally excluded him or her from Social Security. Under Public Law 98-369, these employees should have been covered retroactively by Social Security and, as a result, FERS. Errors occurred when the employing agency did not correct the employee's original exclusion from Social Security following enactment of Public Law 98-369.

Another example of retirement coverage error in this category would be an agency's failure to apply the break-in-service rule established by Public Law 98-21. In addition to new hires after December 31, 1983, the law created a 1-year-break rule, under which Social Security coverage would be required for an employee separated for at least 1 year who then returned to Federal service after December 31, 1983. If the employing agency treated a re-hired employee as excluded from Social Security under this rule, it would have placed the employee erroneously under CSRS, rather than FERS.

2. FERS classified as CSRS Offset. In this situation, the employing agency may have correctly covered the employee under Social Security, but then failed to place him or her in FERS on January 1, 1987, or, if later, upon rehire, probably due to misapplication of the FERS Act's 5-year test. The 5-year test generally excludes a Social Security-covered employee from FERS if the employee has already completed 5 years of civilian service. If an agency miscounted the amount of time creditable during intermittent service, for example, it may have erroneously determined that the employee satisfied the 5-year test and placed the employee in CSRS Offset.

3. FERS classified as Social Security only. The employee's agency may have failed to apply the continuity-of-coverage rule applicable to exclusions from coverage under OPM's regulations. Under this rule, an employee retains retirement system coverage if he or she moves, with a break in service of 3 days or less, from retirement-covered employment to temporary or intermittent employment, which would normally be excluded from retirement coverage. In these cases, the employee should have been covered by FERS, despite the temporary or intermittent employment.

4. CSRS classified as FERS. This situation would occur if an agency incorrectly applied the 1-year-break rule (erroneously determining the employee was covered by Social Security) when rehiring an employee who did not have 5 years of service under CSRS.

5. CSRS classified as CSRS Offset. Here again, the employing agency may have erroneously determined that the employee was subject to Social Security. This would occur if the agency misapplied the 1-year-break rule to an employee who returned to service after a break of less than 1 year.

6. CSRS classified as Social Security only. When an employee moved from a retirement-covered appointment in one agency to a temporary appointment in another agency, the receiving agency may have failed to apply the continuity-of-coverage rule due perhaps to a delay in receiving the employee's records from the losing agency. In this case, the employee should have been covered by CSRS, despite the temporary appointment.

7. CSRS Offset classified as FERS. The employing agency correctly applied the Social Security coverage rules, but not the 5-year test, when an employee was rehired following a break-in-service of more than 1 year. Under this situation, the employee should not have been placed in FERS, unless he or she elected to join FERS within 6 months after being rehired.

8. CSRS Offset classified as CSRS. As in #7, this error may have occurred when an employee was rehired following a break-in-service of more than 1 year. The employing agency did not correctly apply the Social Security coverage rules, but correctly applied the 5-year test to exclude the employee from FERS coverage.

9. CSRS Offset classified as Social Security only. This situation is similar to #3 and #6, where the agency correctly covered the employee under Social Security, but did not correctly apply the regulatory CSRS exclusion rules for temporary or intermittent employment, or the continuity-of-service exception to those rules.

10. Social Security only classified as CSRS. An example of this type of error would be that of an employee who was given a term appointment, which is excluded from CSRS coverage by OPM regulations, and erroneously placed under CSRS after a break in service of 4 or more days following CSRS-covered employment.

Honorable John L. Mica

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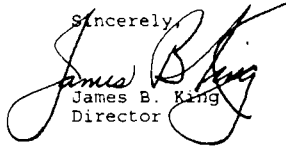
11. Social Security only classified as CSRS Offset. This is similar to #10, except that the agency correctly applied the Social Security coverage rule, probably because the employee had a break in service of at least 1 year.

12. Social Security only classified as FERS. An example of this situation is that of an employee hired for the first time after December 31, 1983, and therefore correctly covered by Social Security. If the employment was temporary or intermittent, the employee's service should have been excluded from FERS, but the employing agency covered the employee under FERS as if he or she was a permanent employee.

While this listing demonstrates the kinds of errors that agencies have made over the years, I would like to emphasize that we believe that coverage errors constitute only a small fraction of the millions of coverage determinations that employing agencies have made. Nonetheless, we agree with you wholeheartedly that because of the distress these errors cause to employees and their families, they should be handled in a responsible and sympathetic manner. We very much regret that any employee may have been treated with callousness in one of these situations. We further agree with you that employees deserve an accounting of the money that has been withheld from their pay and how that money has been reallocated following correction of an error. We will issue guidance to agencies reminding them of these basic responsibilities.

As Mr. Flynn stated at your hearing, we are working on a legislative proposal with the aim of creating a comprehensive remedy for employees who have been disadvantaged by a retirement coverage error. As you know, agencies currently do not have authority to allow an employee to retain the benefits coverage he or she reasonably expected to have during the period of the error, and the employee must make contributions from future salary to makeup for lost opportunities in the Thrift Savings Plan. Sometimes that is not possible. The solution we hope to achieve should simplify the current process and enable us to resolve these errors for the employee both quickly and equitably.

I hope this information is helpful.

Sincerely,  
  
James B. King  
Director



United States Department of the Interior

NATIONAL PARK SERVICE  
ADMINISTRATIVE PROGRAM CENTER  
12795 W. Alameda Parkway  
P.O. Box 25287  
Denver, Colorado 80225-0287

December 24, 1996

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Dear [REDACTED]:

When you entered your career-conditional appointment on [REDACTED] you were placed in the CSRS Interim system. On January 1, 1987, all new hires were converted to the Federal Employees Retirement System (FERS). While reviewing your retirement coverage, we discovered that you were not automatically transferred to FERS, as you should have been, on January 1, 1987. We have determined that you did not have sufficient service to meet the 5-year test to be placed in the CSRS Offset retirement system.

The FERS system is considered a three tier system: FERS account, Thrift Savings Plan (TSP) account, and Social Security. To correct your retirement accounts we must process an SF-50 Notification of Personnel Action, to retroactively convert you to FERS as of January 1, 1987.

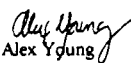
Your TSP account will be adjusted retroactively to correct your account. In addition, you have the opportunity to retroactively contribute up to 10% of your basic pay to your account and receive an agency match on 5% of your contributions. However, lost earnings will not be paid on your contributions. A conversion deposit of 1% of your salary will be added to your account for the period of June 18, 1984 through January 1, 1987. A second conversion deposit of 1% of your salary will be added to your account for the period of January 1, 1987 through March 31, 1987. You are also eligible for "lost earnings", on the 1% agency contributions and the 4% matching contributions due to your contributions of 5% during the time the error occurred. The lost earnings will be based on the rate of return in which your funds were allocated, during the period in which you were placed in the wrong retirement system.



As a FERS employee you are entitled to contribute up to 10% of your pay to your TSP account. Therefore, you are eligible to make-up the contributions from January 1, 1987 through the time in which the error was corrected. A copy of the SF-50 correcting your retirement system and this letter will be sent to payroll. Payroll will send the information

to TSP, to compute the amount owed to your account. Payroll will contact you to set up a payment plan, if you choose to make-up the contributions. The make-up contributions must be made through payroll deductions. The contributions will be in addition to the contributions you are currently making. You may elect to change the amount you are currently having deducted, up to a maximum of 10%. Our records indicate you are currently contributing 5%. The make-up contributions are not eligible for "lost earnings" because you had use of the money at that time. You may not exceed the IRS annual limit on employee contributions in the calendar year in which you make contributions. The 1997 annual limit is \$9,500. The retroactive contributions will be invested according to your current allocation election, unless you make an election solely for the purpose of allocating funds. The amount of time allowed to make-up contributions will be at least two times and not more than four times the number of payperiods in which the error occurred to complete the retroactive contributions. Partial payments are not permissible under the payment schedule. If your net pay is not sufficient to make a full payment, the schedule will be suspended until you are able to make full payments. If you choose to terminate your retroactive payments, the termination is irrevocable. If you separate from government service, you may accelerate retroactive contributions by a lump sum payment from your final salary payment, but not your annual leave payment.

To elect to make retroactive contributions, you must notify this office in writing within 30 days of receipt of this notice, or you will forfeit your opportunity to do so. Please contact Judith Martinez for additional information and assistance. We are also requesting that you acknowledge receipt of this notice by returning a signed and dated copy of this letter.

Sincerely,

  
Alex Yjung  
Director  
Administrative Program Center

Receipt Acknowledged:  Dated: 

cc file

AY/jad



